

Ethics and Judicial Integrity under the Bangalore Principles

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ABSTRACT: Magistrates must demonstrate judicial seriousness and professional rectitude because they do not exercise their profession in an erratic environment devoid of moral valences, but on the contrary, the judicial field is one that must highlight the existence of independent, impartial, efficient and integral justice, representing a basic parameter of a democratic state of law. It is unanimously recognized that the magistracy represents, above all, an ethical duty, which can only have positive results if the magistrate exercises this function by providing proof of integrity. However, this perception is not sufficient to ensure the independence and integrity of the judiciary and, implicitly, society's trust in it. Moreover, it is necessary for magistrates to carry out their daily work based on the ethical responsibility of the important office they hold.

KEYWORDS: Ethics, justice, magistrate, integrity, impartiality, judicial equality

General Considerations on the Bangalore Principles

The Bangalore Principles were drafted to serve as a guideline for magistrates worldwide, to guide judges and to provide the judiciary with a framework for regulating judicial conduct. These Principles of Judicial Conduct represent international instruments adopted worldwide regarding the conduct of judges. Of course, they have a recommendation character, thus supplementing the existing legal and deontological norms at the national level. Since in the continental legal system, judges and prosecutors have a close professional status, it was found that the present guidelines should apply to both categories of magistrates (Dănilăuț 2010, VII).

The Bangalore Principles envisage the independence, impartiality, integrity, etiquette, equality, competence and diligence of magistrates in carrying out the act of justice. Their development was based on national codes of conduct for judges, such as, among others: The Code of Judicial Conduct adopted by the House of Delegates within the American Bar Association, The Ethical Principles for Judges, developed with the cooperation of the Conference of Canadian Judges and approved by the *Canadian Judicial Council*, Idaho Code of Judicial Conduct, Iowa Code of Judicial Conduct, Rules Governing Judicial Conduct, New York State, USA, Code of Judicial Conduct adopted by the Washington Supreme Court, USA, etc. as well as regional and international instruments, among which we mention: the Draft Principles on the Independence of the Judiciary (the "Syracusa Principles"), developed by a committee of experts convened by the International Association of Criminal Law, The International Commission of Jurists and the Center for Independence of Judges and Lawyers, 1981 (Draft Principles on the Independence of the Judiciary), Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982 (Minimum Standards of Judicial Independence), UN Basic Principles on the Independence of the Judiciary, adopted by the UN General Assembly, 1985 (United Nations Basic Principles on the Independence of the Judiciary), Draft Universal Declaration on the Independence of the Judiciary

(“Singhvi Declaration”) developed by L.V. Singhvi, UN Special Rapporteur on the Study of the Independence of the Judiciary, 1989 (Draft Universal Declaration on the Independence of Justice), Beijing Declaration on the Principles of the Independence of the Judiciary in the Lawasia Region, adopted at the Sixth Conference of Chief Justices, August 1997 (The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region) and many others. Also, this set of Principles was developed with the participation of chief justices and senior judges from 75 countries with common law and civil law systems.

Although we have listed only a few of the official instruments that govern the conduct of magistrates in different countries, we can see that when developing the Bangalore Principles, prestigious legal instruments were consulted and judicious work took place that resulted in a set of principles based on generally recognized judicial valences and with recommendation value for the conduct of magistrates in the exercise of judicial powers. Attributes such as independence, impartiality, integrity, etiquette, equality, competence and effort have acquired the value of mandatory rules of conduct that magistrates must demonstrate in order for litigants and, in general, citizens to trust the act of justice carried out by magistrates.

We reveal a well-known adage by Francisco de Quevedo, which stated that: “*where justice does not work, it is dangerous to be right*”. Through all of their professional but also social conduct, magistrates must always assure citizens that whenever they call or assist in the execution of an act of justice, it will be carried out with speed, equality and a fair judgment without ever leaving any shadow of suspicion on any inequity, impartiality or lack of independence in the pronouncement of a legal and thorough decision, a decision taken without the interference of any other state powers or intelligence services of whatever nature they may be.

The Legal Substance of the Bangalore Principles

The authors of the Bangalore Principles, as a Code of Judicial Conduct, ruled that, in fulfillment of the act of justice, magistrates must ensure the beneficiaries of seven supreme legal valences: independence, impartiality, integrity, etiquette, equality, competence and diligence.

Regarding **independence**, the starting principle is the following: *judicial independence is the premise of the rule of law and a fundamental guarantee of a fair trial. Consequently, the judge will defend and serve as an example of judicial independence, both individually and institutionally*. Thus, the judge must exercise his judicial function independently, based on his own assessment of the facts and in accordance with the spirit of the law, without external influences, suggestions, pressures, threats and without any direct or indirect interference, regardless of who it may come from and for what reason. Also, the judge must be independent from his fellow magistrates in relation to his decisions, which he is obliged to make independently. Equally, this Code of Judicial Ethics stipulates that by independence it is understood that the judge will encourage and support the necessary guarantees to fulfill his judicial duties in order to maintain and strengthen the institutional and functional independence of the judiciary and that the judge must demonstrate and promote high standards of judicial conduct in order to strengthen public trust in the judiciary, fundamental trust to maintain the independence of the judiciary (Dăniluț 2010, 3).

Of course, all these attitudes and ways of judicial conduct are elements of an ideal state of law, if they were fulfilled by the entire judicial body of a state, but we believe that they are useful and necessary recommendations that must be reiterated endemically

in the continuing education courses at which magistrates participate throughout their judicial career.

Relative to **impartiality**, the emanating principle is: *impartiality is essential to the proper performance of the judicial function. It concerns not only the decision itself, but also the whole process by which it is reached.* It has been said (Scripcaru and Ciucă 2009, 15) that the role of the ethics of legal professions is that of “forming the professional conscience, serving the truth without serving it and, thus, avoiding on a subjective level any dissonance between performance and aspirations professional and the concrete reality it serves”. More precisely, in the view of the same authors (Scripcaru and Ciucă 2009, 42), the justification of legal deontology, in relation to impartiality, consists in the fact that it helps the professional to: the formation (contribution) of the professional personality; the achievement of good (legal value) through the profession; satisfying self-transcendence aspirations; mediator between morality and law; the humanization of the legal norm through the knowledge of man; reports and resolves human rights abuses; resolve conflicts of professional duties, in the sense that the natural ones precede the positive ones, the prohibitive ones precede the affirmative ones, the certain ones precede the uncertain ones, the equity ones precede those of justice.

According to this principle, judges must exercise their judicial duties without favors, subjectivity and prejudice, they will strive to adopt a conduct, both in court and outside it, and to maintain and strengthen the confidence of the public, and of litigants in the impartiality of the judge and the judiciary.

Also, in accordance with the principle of impartiality, the judge will have to refrain from any comment in connection with which he could reasonably believe would affect the solution or damage the appearance of the fairness of the trial. Thus, the judge will refrain from making comments in public or otherwise, which could affect the fairness of the process towards any person or issue (Dănilă 2010, 4).

Relative to **integrity**, it has been held that it is *essential to the proper performance of the judicial function.* The judge must perform the act of justice through legal values, by satisfying the sense of justice and avoiding (contributes to avoiding) judicial errors. At the same time, the judge offers the profession vocational motivations and satisfies the need for social appreciation of himself and, through him, of the profession.

Regarding **etiquette**, the Code of Judicial Conduct recommends that *good manners and their visible observance are essential in the performance of all activities carried out by the judge.* Referring to this valence, the magistrate must be aware that with the choice and exercise of this profession, his conduct in society will be indirectly monitored by citizens, the latter having higher expectations than ordinary citizens and, we allow ourselves to affirm, that it is natural to be so. Being in the public eye, the judge must accept, freely and willingly, certain personal restrictions that would seem a burden to the ordinary citizen. In particular, the judge must have a conduct that is consistent with the dignity of the position of magistrate. The judge, in his personal relations with other legal professionals who regularly work in his court, will avoid situations that could reasonably give rise to suspicions that could create an appearance of favoritism or bias (Dănilă 2010, 5).

Relative to **equality**, it has been ruled that *ensuring equal treatment for all before the courts is essential for the correct exercise of judicial powers.*

In fulfilling this recommendation, any judge must depart *ab initio* from art. 16, paragraph (2) of the Romanian Constitution, according to which: “*no one is above the law*”. Certainly, this provision in our Constitution is also found in most other international constitutions and it is natural for it to be so.

The judge, in the exercise of his judicial powers, will not be allowed to show, by words or attitude, bias or prejudice towards a person or a group of persons, for irrelevant reasons, and will exercise his judicial powers with due respect towards all persons, such

as the parties, witnesses, lawyers, court staff and colleagues, without making any distinction between them on irrelevant grounds that have no importance for the proper performance of his duties (Dăniluț 2010, 7).

The concept of “equality” represents a principle according to which all people are recognized with the same rights and are subject to the same duties provided by the rule of law. This principle is expressed both legally and doctrinally and jurisprudentially. Over time, equality crystallized as a legal principle and as a fundamental right and a specific legal category. The law must provide equal opportunities to all citizens. This is the meaning of the constitutional provision according to which citizens are equal before the law and public authorities, without privileges. The complexity of this principle led in the jurisprudence of the Constitutional Court of Romania to the proclamation of a right to difference as an expression of the equality of citizens before the law (<http://abcjuridic.ro/principiul-egalitatii-in-drepturi-in-jurisprudenta-ccr>).

In the doctrine (see: CCR Decision no. 601/2018, CCR Decision no. 633/2018, CCR Decision no. 72/2019, CCR Decision no. 220/2019, CCR Decision no. 243/2019) the existence is admitted of positive discrimination, even regulated by some constitutional texts, which impose social protection measures. The jurisprudence of the Constitutional Court regarding the limits of the constitutional principle of equality varies between a strict equality, sometimes assimilated with the principle of non-discrimination, and a relative equality of treatment, which accepts the differentiation of the legal regime, depending on the objective particularities of the concrete situations.

Regarding **competence** and striving, the Code of Judicial Conduct makes the recommendation that they must represent premises for the correct exercise of judicial powers. Thus, the judge will dedicate his professional activity to the performance of judicial duties, which include not only the exercise of the judicial function, the responsibilities towards the court and the making of decisions, but also the performance of other tasks relevant to the judicial activity and the operation of the court, and will also take the reasonable measures required to maintain and improve the knowledge, skills and personal qualities necessary for the adequate performance of judicial duties, using for this purpose the training programs and any other facilities available, under judicial control, to judges (Dăniluț 2010, 8).

There are essential things, to which the judge must pay attention: both during the hearing and when pronouncing the sentence, the judge must find a way to integrate his independence, thereby understanding the fact that the judge must be endemically careful to what is happening around him/her and to the developments and legal changes that are taking place. Moreover, he must try to consult and exchange knowledge and contacts with other judges; also, the professional sense of the judge must motivate him to update his knowledge and put it into practice, the decisions of a judge having a smaller or larger impact on the whole society (Olah 2012).

During the initial professional training within the National Institute of Magistracy, as well as during continuous training, it was mentioned (Popescu 2015) that they will be considered aspects that ensure a wide range of qualities that a magistrate is supposed to have: moral qualities, scientific knowledge of law, experience, psychological skills suitable for the position, social and life concepts compatible with the position, ensuring a trust of citizens in the capacities of the person appointed to the position of magistrate.

Conclusions

It is natural for society to demand from a judge judicial valences and virtues such as: independence, this not being a privilege granted for the benefit of the judge, this representing the right of every citizen in a democratic society to benefit from a justice

that is perceived as being independent from by the legislative and executive power and which protects the freedoms and rights of citizens in a state of law; integrity, as an attribute of the judicial function in which the judge fulfills his duties with integrity, in the interest of justice and society, having the same obligation of integrity both in his public and private life; impartiality, which implies the absence of any prejudice or preconceived ideas in the exercise of judgment, as well as in the judicial procedure prior to the act of justice; balance and discretion, which implies the obligation to show reserve and discretion by the judge, the existence of a balance between the rights of the judge as a citizen and the obligations related to the exercise of his office; diligence, which implies that the judge must be diligent in resolving cases; respect and the ability to listen, respect being the ability of the judge to treat with due consideration the place/position and dignity of persons. Listening is the ability of the judge to pay attention to the presentation of the facts and the deductions/technical-logical reasoning presented by the parties and their defenders; equality of treatment, which requires the judge to grant all rights, both in the course of, but also as regards the outcome of a process, recognizing the unique character of each individual; the competence resulting from the obligation of the judge to have a high professional capacity; transparency is a judicial attribute by virtue of which information on the functioning of justice and the presence of the public at judicial proceedings (Compendium of the European Networks of Councils for the Judiciary on judicial councils – ENCJ 2021).

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