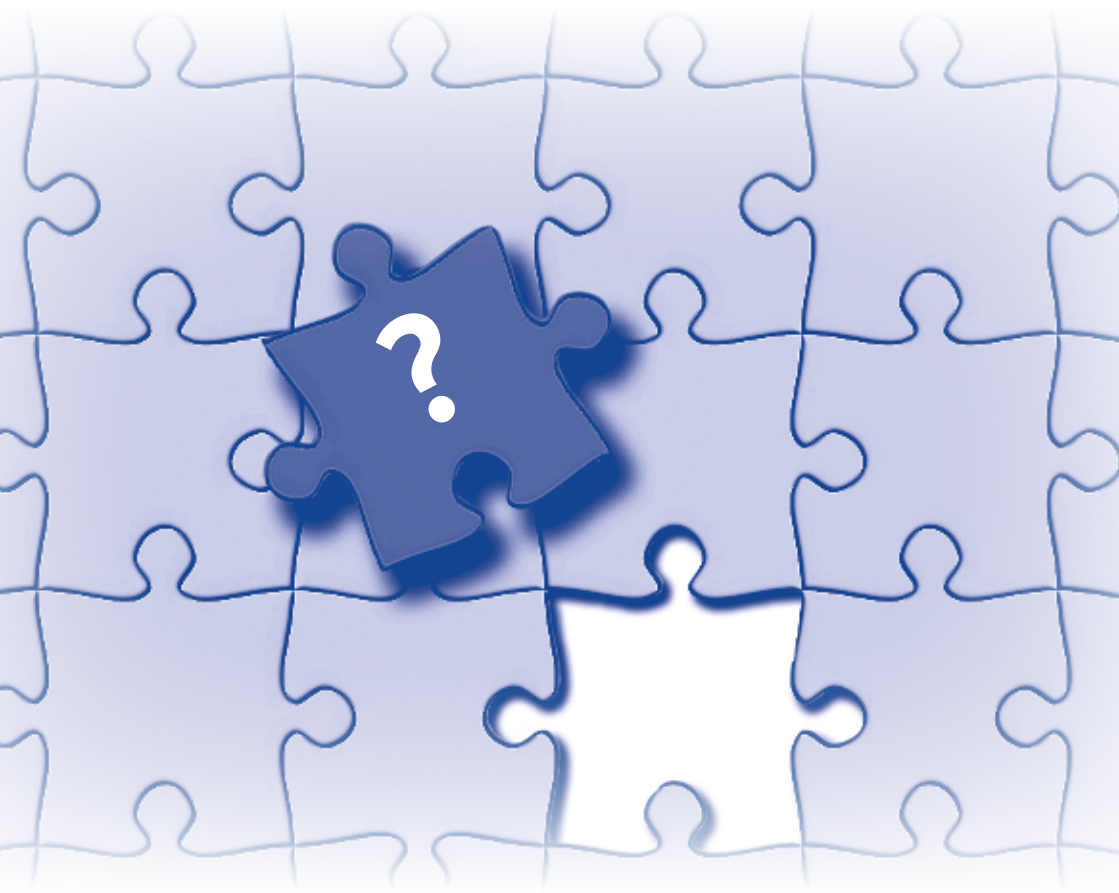




JUDICIAL ETHICS IN GERMANY



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THESES FOR DISCUSSING PROFESSIONAL ETHICS OF JUDGES AND PUBLIC PROSECUTORS AT THE DEUTSCHER RICHTERBUND

Why do German judges and public prosecutors deal with professional ethics? Are the position and tasks of judges not sufficiently defined in the constitution and the law on the judiciary, thus guaranteeing, as it says there, that judges are independent and are only bound by the law and justice and by their own conscience? Are there not already enough laws, norms and regulations? And, besides, do judges and public prosecutors not swear a professional oath?

The principle of the division of powers laid down in the German Basic Law guarantees the independence of the judiciary as the third pillar of state power, besides the legislature and the executive. For this reason alone, the profession of judges and public prosecutors must not be understood as a mere component of the “civil service”. Instead, it needs to be animated by a constant awareness of the position and responsibility related to the division of powers. It is true that the constitution and laws guarantee the independence of the judiciary as a protection against outside influence. Internal independence, however, cannot be prescribed but must be practised. Every judge and – despite being integrated into a hierarchical authority structure – every public prosecutor must decide for him- or herself how to shape such independence. Laws and general societal values are only helpful to a limited extent here. What is necessary is a sense of duty which distin-

guishes judges and public prosecutors from mere legal technicians. Statutory rules only create the framework. They must be supplemented by assessments which depend on the individual situation and are influenced by the circumstances of the individual case, by personal preconceptions and changing conditions.

Ethical conduct is always the result of a process of contemplating and weighing up, based on an act of free will. To many questions there will not be one right or wrong answer. The Deutscher Richterbund has therefore deliberately chosen not to draft guidelines or codes of conduct in terms of professional ethics. Instead, it adopts those values in its theses on the professional ethics of judges and public prosecutors which distinguish self-aware and responsible judges and public prosecutors. A final canon of values does not exist in this context. However, the Deutscher Richterbund is convinced that the values dealt with in what follows are vital to the profession of judges and public prosecutors.

The intention is not to set any preconditions by outlining these values. They call on judges and public prosecutors to become consistently aware of their office and should serve as an inspiration and motivation for viewing their own conduct with a critical eye. They aim to prompt a discussion and offer help in solving ethical questions.

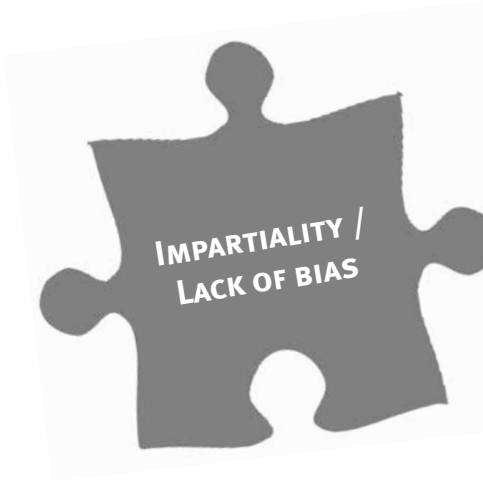


Constitutionally guaranteed judicial independence is a valuable asset. It protects all judges against any outside influence. Judges are independent of any instructions, in their work in general as in their rulings from case to case, and they are exclusively bound by the law and justice and are only committed to their own conscience. Judicial independence, however, is neither an end in itself nor a personal privilege; rather, it guarantees the functioning of a state governed by the rule of law. In the way in which the German Basic Law on the one hand provides judges protection against outside influence, it also obliges them on the other hand to free themselves from any inadmissible influences both in their rulings and in their conduct. Any impression of inadmissible influence must be avoided in order to guarantee public trust in the steadfastness of the law and

the functioning of the judiciary. Judges are called upon resolutely to oppose all attempts by parties involved in proceedings, by the media, and by superiors or by ministries, to interfere with their independence. They do not allow themselves to be guided by their own interests or practical considerations in their conduct as regards inadmissible influence.

This applies equally to public prosecutors who are civil servants bound by instructions in terms of their status, but who, with regard to actual content, fulfil tasks similar to those of a judge in large parts of the proceedings. Along with judges, public prosecutors, too, are major guarantors for legal certainty and hence for the functioning of the rule of law. Accordingly, they check instructions as to whether these are in line with the law and justice and with their own conscience.

Personal independence is also an integral part of independence generally. Shaping and protecting personal independence is a task which is personally assigned to judges and public prosecutors and for which only they can be responsible. Personal independence requires that one becomes aware of the influences brought to bear on one's own rulings resulting from personal aspirations, values, experiences and opinions. Judges and public prosecutors challenge these influences critically in every single case.



Judges always aim to avoid being guided by any off-topic considerations when applying the law and searching for justice and the truth. They are aware of their individual traits, their personal development and socialisation. In view of such inevitably subjective imprinting, they strive in any event to achieve the utmost objectivity. They put neither their personal assessments, sympathies or antipathies nor current public opinion above their commitment to democratically developed laws, but critically check their findings, argue from the facts and are open to criticism from third parties.

The fact that the judicial office is basically independent of external controls establishes a particular responsibility. Judges do not consider the independence of their office as a personal right. They are aware of the resulting obligation for their impartiality. Their work is therefore marked by open-mindedness and a willingness to listen to the parties involved, to grasp individual interests and connections and to assess these adequately. Acting without

regard for the reputation of the person concerned enjoys high priority in their professional work.

In the performance of their duties, judges avoid being influenced by close relationships to parties in the proceedings, or to their counsels and representatives of their interests. And where such close relationships exist they weigh up whether these could create the impression of bias among the other parties in the proceedings, and they address the issue by disclosing the existence of these relationships in good time.

Like judges, public prosecutors are bound by impartiality. Accordingly, they always reflect critically on any aspects which could impair this impartiality in order to develop and adopt a point of view which is uninfluenced by any of the parties involved. A readiness for critical reflection is particularly necessary in those situations where personal relationships have evolved as a result of a long-standing cooperation or friendship with judges, defence counsels or the investigating police officers.

Public prosecutors always file criminal proceedings when they consider this to be right and necessary, based on a conviction born of his or her experience. This also applies to requests that are supposedly, or actually, unpopular. Similarly, public prosecutors are sufficiently aware of their own potential sympathies or antipathies towards victims or defendants that in such cases too they are able to satisfy in an impartial fashion the fundamental requirements of presumption of innocence and victim protection.



Personal integrity means aligning one's actions and one's speech with values and principles shaped by humanistic principles. People of integrity live their lives knowing that their personal convictions, standards and values are expressed by their behaviour.

The rule of law is also built on values and principles. Judges and public prosecutors have a particular role as representatives of the rule of law and are therefore bound

by principles of personal integrity not only in the performance of their office but in their behaviour as a whole.

The integrity of judges and public prosecutors expresses itself in conduct, both in office and elsewhere, which is cognisant of and acceptable as regards that office. The actions and demeanour of honest judges and public prosecutors are characterised by seriousness, a sense of decency and courtesy.

Trust in the judiciary requires that judges and public prosecutors must be trustworthy. This, in turn, is based principally on the fundamentals of honesty and sincerity, dependability and discretion.

Another aspect of integrity is credibility, which requires authenticity from judges and public prosecutors but also steadfast determination. Alongside these traits, however, judges and public prosecutors must demonstrate a readiness to recognise, acknowledge and correct their own errors and mistakes.



Judges and public prosecutors assume special responsibility not only for the rule of law and its principles but also for a society that relies on justice based on the rule of law and for all those who are affected by the rulings of judges and public prosecutors. They are aware of their role as a third force and the influence and decision-making competency that ensue from this. They can take away freedoms, impose duties and restrict rights by virtue of their office. They influence people's lives in every instance thanks to the manner in which they conduct proce-

dings and the rulings they deliver. Conscious of this responsibility, they keep firmly in mind the consequences of their rulings for the individual person, even in supposedly simple routine cases.

As regards the parties involved in proceedings, judges and public prosecutors always act in a way that justifies the trust placed in them. They know that trust can only be established if the course of proceedings and the resulting rulings are readily comprehensible. Therefore, they respond to the concerns of the parties involved and endeavour to make the proceedings and the resulting ruling credible. They treat the parties involved in proceedings with respect, do not disparage them and avoid self-projection.

Judges and public prosecutors also know that they can only meet their responsibilities as regards the rule of law, society and the individual if they take cognisance of their responsibility for a well-functioning judiciary in general and for the work that falls within their own competence in particular and if such cognisance is borne out by their actions.



Judges and public prosecutors act both in office and otherwise in such a way as to avoid challenging the trust placed in their independence.

They refrain from behaving or expressing themselves in such a way as to damage that trust and the respect owed to the judiciary. They endeavour to promote trust in their commitment to justice through moderation, objectivity and emotional restraint.

They exercise their duties with self-awareness and due respect for the responsibilities of their office. They respect the dignity and the interests of the parties involved in proceedings in a manner that is free of self-righteousness or self-importance.

Within the judiciary itself, judges and public prosecutors are highly respectful and polite in their dealings with colleagues and their work. Where criticism is felt to be justified, it is expressed in a moderate and objective fashion while personal insults are avoided, even when such criticism is directed at other courts.

The tasks of the judiciary include both the concern for justice in individual cases and the creation of legal certainty and the protection of law and order. Judges meet the requirements of developing the law as regards case law responsibly and cautiously.

Judges and public prosecutors are aware of the importance and impact of their office, both within and beyond the confines of their professional life. They are mindful of the impression they make in the way they conduct themselves personally, socially and politically. They do not use their professional position for personal benefit and endeavour to avoid any impression of abusing their office. In their dealings with the public, and especially where party politics are involved, they pay careful heed to potential conflicts with their office.



The office entrusted to judges and public prosecutors is a position of great power. They treat this power responsibly and are constantly aware that they are dealing with people whose personal circumstances are affected by their rulings.

Judges and public prosecutors listen patiently to people in a hearing and deal

seriously with them as individuals who entertain opinions and have problems that need to be addressed. They treat them with decency and courtesy and are aware of how it feels to appear in front of a court. They show empathy, but not solidarity, with them.

Behaving in a humane way means not only understanding another person but also striving to be understood by that person. Judges and public prosecutors are ready to challenge their own actions and decisions, they are open to criticism and able to take such criticism on board.

Judges and public prosecutors exercise the office entrusted to them as human beings too and do not hide behind their robes. They treat their colleagues, staff members and third parties in a humane and respectful way.



Sometimes courage is required, both for recognising what is good and right and for putting into practice insights thus gained. This can be seen in the willingness and strength required for overcoming one's own anxieties, and for acting according to the standards recognised as good and right, even in cases where

such action proves to be difficult or dangerous.

Accordingly, judges and public prosecutors need particular courage when it comes to making unpopular or lonely decisions. This applies all the more when they have to resist the temptation of being influenced in their actions and rulings by opportunism or career thinking. It requires courage actively to stand up for values and the fundamentals of the rule of law even in those cases where a ruling fails to reflect the spirit of the times or seems to involve personal disadvantages. Above all, active commitment is precisely the opposite of indifference, disinterest and silence.

Courage manifests itself, after all, in the willingness and ability to redress the balance of one's own thinking and to deal openly with one's own mistakes.



Judges and public prosecutors deal in a diligent and thorough manner with the cases on which they are required to rule.

They give their rulings based upon a broad set of information and the expertise required by each particular case, which they acquire for themselves or arrange for others to mediate as they see fit. They know that their own experience of life is limited. They are committed to continuing to develop both in personal terms and in terms of their knowledge and expertise. Accordingly, they make time for

further training and are prepared to look “beyond the end of their own nose”.

They take it upon themselves to ensure that the demands of their daily routine are not so taxing as to affect the diligence of their approach.

They are aware that personal interests could play a role in their professional actions. The manner and standard of conducting proceedings must not be influenced by pre-existing pressures on the proceedings themselves, nor by any personal motives. Settlements and procedural communications are not an end in themselves and are not enforced.

In dealing with the tasks with which they are entrusted, judges and public prosecutors know that a conflict exists between the size of their workload and the quality to which they aspire. Their answer to this is to behave responsibly, taking into account the fact that the public’s access to justice requires as timely a decision as possible but not at the expense of quality.



For the justice system and its decisions to be accepted by society is indispensable to the democratic rule of law. The transparency of judges' and public prosecutors' actions is an essential requirement here.

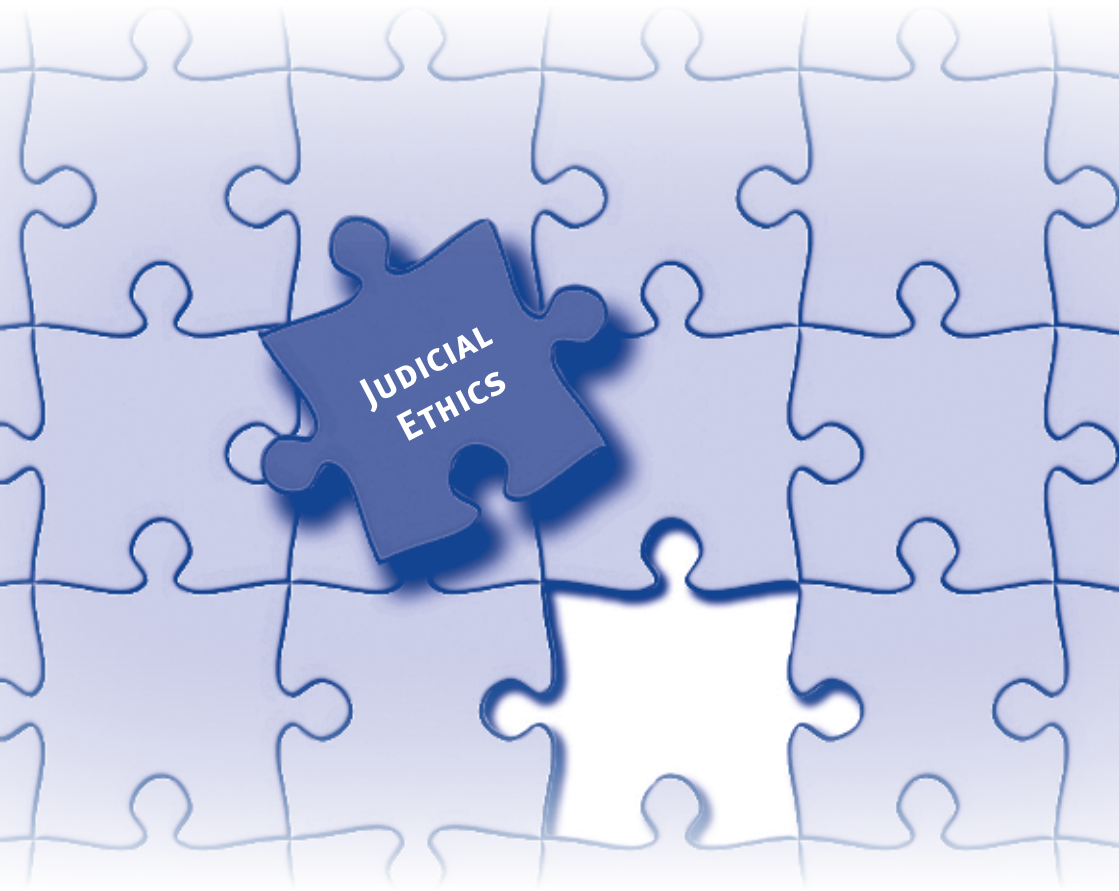
Hence, judges and public prosecutors are always ready to tackle the task of making proceedings and rulings understandable for the parties involved. To this end, they approach the parties involved openly, listen to them, deal with their points of view and guide them through the proceedings with clear comments on the course of the proceedings and the legal situation, thus taking all procedural interests into account. They use language, both oral and written, that is readily understood and make sure that

the parties' main concerns are reflected in the reasoning that underpins their rulings.

Public prosecutors are aware of the possible contradiction that may exist between investigative activity and transparency. Before information is disseminated, they therefore weigh up carefully the interests of the prosecution and the interest of the defendants and victims in being kept informed.

Transparency and fairness in court trials and public prosecution proceedings also involves disclosing to the parties involved any existing close relationships if these could give rise to the impression of bias.

Judges and public prosecutors see it as their job to acquaint the public with the way the justice system functions. They acknowledge the legitimate interest of the public in being kept informed about court proceedings and weigh up that interest alongside the personal rights of the parties involved in an individual case, while also bearing in mind that media coverage and public influence may affect the course and the outcome of the proceedings. They do not use the interest of the media and the public as an opportunity for showing themselves off to advantage.



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