

Compendium of the Judiciary's Ethical Obligations

The Values of the Judiciary

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Introduction

1. Article 20-2 of Organic Law No. 94-100 of 5 February 1994 entrusts the plenary formation of the High Council for the Judiciary [*Conseil supérieur de la magistrature*] with drawing up and publishing a compendium of the judiciary's ethical obligations.

Stemming from the reform made by the Organic Law of 5 March 2007¹, the first edition of this guide was published in 2010 following important design and consultation work. It therefore supports the professional practice of judges and prosecutors.

In accordance with the wishes of the legislator for organic laws, this compendium is not a code of practice with regulatory force, the content of which would be fixed. It sets out principles of professional conduct structured around important values that must shape the behaviour of any member of the judiciary.

This position, clearly asserted at the time of parliamentary business, "reflects the decision not to fix the content of primarily evolving rules or detail them in a comprehensive guide but which is inevitably incomplete"².

2. The last few years have indeed highlighted the need to update the compendium published in 2010.

With evolving lifestyles, it had not been possible for those producing it to take certain data into consideration. This applies for instance to the place, now essential, of social networks and media, the use of which, both by members of the judiciary and litigants, has an impact on the ethics of judicial actors.

Certain legislative or regulatory changes also called for an update. Organic Law No. 2016-1090 of 8 August 2016³ notably introduced into the statutes of the Judiciary the concept of conflict of interests, of which the connection with the principle of impartiality requires specific consideration. For prosecutors, it was also important to learn lessons from the restriction in 2013 on individual instructions, which supplements the declaration of a principle of impartiality of the public prosecutor⁴.

¹ Organic Law No. 2007-287 of 5 March 2007 on the recruitment, formation and responsibility of members of the judiciary, Article 18.

² Report No. 176 (2006-2007) of Mr Jean-Jacques Hyest, drawn up on behalf of the *commission des lois* [legislative committee] and submitted on 24 January 2007, p. 97.

³ Organic Law No. 2016-1090 of 8 August 2016 on statutory guarantees, the ethical obligations and recruitment of members of the judiciary as well as the High Council for the Judiciary.

⁴ Law No. 2013-669 of 25 July 2013 on the remit of the Minister of Justice and public prosecutors in terms of criminal policy and implementing criminal proceedings, Articles 1 and 3.

3. On the strength of these assessments, the Council set out to revise the entire compendium of the judiciary's ethical obligations.

To this end, it drew on the lessons learned from its activity in disciplinary matters, as it highlighted new requirements in the field of preventing risk behaviours. The observations made by the *commissions d'admission des requêtes* [applications admission committees], responsible for examining the litigants' complaints, have supplemented this initial approach.

In June 2016, the Council's ethical support and monitoring service was created. This service made possible to understand better the practical needs of members of the judiciary in their professional practice and in their private lives. During the first 18 months of its activity, this service was the subject of nearly 100 referrals. The service ensures the anonymity of individuals asking the questions. It is thus able to inform the Council of problems encountered that are sometimes completely ignored in the original compendium.

The discussions that Council members had with members of the judiciary, thanks to information missions carried out in the courts, have allowed for adjustments in order to better take account of constraints specific to court life.

Finally, the Council has contributed its thoughts on the feedback sent to it as part of a large consultation that it conducted on the rewriting of the compendium.

4. These combined elements have led the Council to consider a complete rewrite of the compendium, by refocusing it on the values of members of the judiciary, which it structures around the fundamental principles of independence, impartiality, integrity, fairness, professional conscience, dignity, respect for and attention to others, restraint and discretion.

The formal distinction between an institutional level, functional level and personal level and the inclusion in the compendium itself of comments and recommendations that characterised the previous version have been abandoned in favour of a more condensed writing, highlighting the essential principles of judicial ethics.

Nevertheless, the Council has considered it important to propose a practical and situational approach to these principles, supplementing the publication of the compendium with good practices, comments, guidelines and recommendations by subject intended to guide members of the judiciary in their ethical thinking.

5. Beyond the editorial revisions and additions made in order to meet the new needs of the judicial institution and the people working for it, this rewrite relies on the willingness to focus the ethics of members of the judiciary on the notion of quality of justice, without ignoring that this depends largely on the human, material and budgetary resources allocated to it.

The 2010 compendium remained firmly fixed in the context that governed its drafting, in which the ethics were primarily perceived as a tool for preventing disciplinary misconduct⁵.

The very concept of ethics⁶, focused on professional duty, could not lead to the dismissal of this aspect. However, it may also not reduce the ethical approach to a purely preventive process, which would make us lose sight of the fundamental idea based on which, more than the sole prevention of misconduct, the "proper behaviour" of members of the judiciary must above all be guided by seeking a quality judicial system, in all its aspects.

It is clearly this idea of qualitative ethics influencing the professional culture of members of the judiciary, more than normative or moralistic, which has guided the Council in drafting this new edition of the compendium.

6. The additions and adaptations that it has made do not in any way undermine the nature and objectives of this compendium. The wording of the introduction in the first version therefore remains relevant:

"Administering justice is an essential function of a state of law. Members of the judiciary hold in their hands the freedom, honour, security and material interests of those living within the French Republic's territory. This eminent role entails certain demands and requires appropriate human, financial and material resources.

"The objective of the following principles, comments and recommendations is to establish ethical references for the French judiciary. They are designed to support and guide them and provide the judicial institution with a framework for a better understanding of its ethics. Their purpose is also to offer representatives of the executive and legislative powers, as well as persons involved in the administration of justice and the public, a better understanding of the complexity of how the judiciary fulfils its role.

⁵ Houillon et al., *Report of the National Assembly's inquiry committee responsible for identifying the causes of miscarriages of justice in the so-called Outreau affair and to submit proposals to prevent their recurrence*, p. 457 et seq.

⁶ "Science of duties" as defined by *Littré*; "All duties imposed on professionals through carrying out their job" as defined by *Nouveau Petit Robert*.

"As members of the judicial authority, judiciary members draw their legitimacy from the law, which requires them to be independent and impartial, principles also imposed on the other powers. Disregarding these requirements would compromise public confidence.

"By their integrity, members of the judiciary demonstrate that they are worthy of deciding how individuals may exercise their fundamental rights. More than any others, they are bound to demonstrate probity and loyalty.

"Through their constantly updated knowledge of applicable texts and principles and their determination never to fail to protect the individual freedoms they safeguard, members of the judiciary affirm the pre-eminence of the law.

"Justice is administered in the name of the French people. Members of the judiciary have a duty to be attentive to those they judge and those around them, without ever violating anyone's dignity, whilst preserving the image of the judicial institution and upholding their duty of restraint.

"This compendium does not constitute a disciplinary code but rather a guide for judges and prosecutors who, in France, are all members of the same judicial body. Its publication is designed to reinforce public confidence in the independent and impartial functioning of the French judicial system."

7. Finally, the Council is aware that the revision that it has carried out will not remove the need, in the future, for further changes and updates, as social and legal changes dictate.

This edition is therefore meant to be a step, in the form of a contribution to the ethics of judiciary members which, as they are shaped each day, both individually and collectively, constitute a topical matter.

Chapter one

Independence

The independence of the judicial authority is a basic principle of constitutional value, arising from the principle of separation of powers. It constitutes one of the guarantees of a state governed by the rule of law. For society, it is the condition for its confidence in the judicial system. For the litigant, it is the condition for a fair hearing. For members of the judiciary, it is the condition of their legitimacy.

1. The independence of the judicial system is ensured primarily by the status of members of the judiciary as well as by the means made available to the judicial authority. It depends closely on the conditions of their recruitment, appointment and progress of their career.
2. Independence also requires members of the judiciary to have a mindset, interpersonal skills and knowhow that must be taught, developed and improved throughout their career.
3. Members of the judiciary shall defend the independence of the judicial authority. It requires them to act and rule by applying the law and following the procedural rules in force, based solely on the elements discussed before them, free of any influence or pressure, and without having to fear any disciplinary measure or having any expectation of personal gain.
4. Members of the Judiciary shall introduce and lead proceedings, conduct hearings and give their decisions independently.

In the performance of their duties, they shall disallow on principle and dismiss any intervention seeking to influence their decisions directly or indirectly.

As defenders of personal freedom, they shall apply the rules of law based on the elements of the proceedings, without giving into the fear of displeasing or the wish to please the executive power, legislative power, judicial hierarchy, media, public opinion or any other organisation.

As soon as they suspect that any influence or pressure, whatever its origin, may be put upon them, they shall turn to the applicable procedural rules (collegiality, joint referral, etc.) and may inform their superiors.

5. One key guarantee of judicial independence is a judge's security of tenure and the rule that they shall only be promoted with their free consent.

6. The independence of members of the judiciary within their judicial activity is guaranteed by observing the requirements of the proper management of the court (appointment of judges, distribution of cases, balance of workloads, etc.).

7. The Presidents of the courts of first instance shall ensure the independence of members of the judiciary within their jurisdiction. To this end, the appointment of judiciary members within departments and the assignment of cases must take place according to objective, precise and transparent criteria. They must never be guided by the wish to influence the outcome of a decision. Only the department's requirements that have been duly established must be taken into account.

8. Judiciary members shall protect their independence from executive and legislative powers by refraining from any inappropriate relationship with their representatives.

Although they have, like any citizen, the right to privacy, they shall however refrain from overt relationships or public behaviour that is liable to cast doubt on their independence with which they discharge their duties.

9. Although they belong to the same body and discharge their duties in the same place, judges and prosecutors shall maintain and publicly demonstrate their mutual independence.

10. As defenders of personal freedom, prosecutors may, in the same way as judges, freely develop in the hearing, under any circumstances, the oral submissions that they believe appropriate in the best interests of justice.

11. Members of the judiciary enjoy the rights granted to any citizen to join a political party, trade association, association or philosophical society and to practise the religion of their choice. However, they may not be bound by obligations or constraints that are liable to restrict their freedom of thought or action and undermine their independence.

12. Active judiciary members shall not solicit honours for themselves either directly or indirectly.

13. Members of the judiciary may not be prosecuted or liable for disciplinary action due to their court decisions.

Chapter II

Impartiality

Impartiality requires judiciary members to overcome any prejudice. As a key element of public confidence in the judicial system, it constitutes a right guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Compliance with the basic principle of equality of all persons before the law depends on it.

1. Members of the judiciary must keep the parties at equal distance so as to remain impartial and objective in the performance of their duties. It is not enough that they are impartial in performing their duties, they also need to appear impartial.
2. Impartiality concerns both judges and prosecutors.
3. The impartiality of judiciary members means that the allocation procedures within a court are based on objective and transparent criteria, according solely to their professional skills and ethics.

It requires the allocation of appropriate human and material resources to the courts for the performance of their tasks in order to avoid any external public or private contribution.

It requires the rigorous application of the rules on professional incompatibility contained in the statutory order, the French Code of Judicial Organisation and the Codes of Civil and Criminal Procedure.

It is reinforced by the rules intended to prevent conflicts of interest.

4. Court hearings must be public unless legal exceptions apply. The effectiveness of the publicity of hearings contributes to impartial justice.
5. Judges may not publicly express a belief through their comments or behaviour until the decision has been given.
6. In all places, especially within the areas in and around the courtroom, judiciary members must not appear to be in a close relationship with either party or their counsel.

Judges must not appear to be in a close relationship with the representative of the public prosecutor, or vice versa.

7. Members of the judiciary who have exercised responsibilities outside of the judicial body must ensure that their impartiality cannot as a result be undermined.

8. They shall inform the President of the court of any change in their situation or in that of their close friends and family requiring an amendment to their declaration of interests.

9. Members of the judiciary must ask to be removed or withdraw if it appears that they have a connection with a party, their counsel, an expert or any interest in the proceedings that may cast legitimate doubt on their impartiality in handling a dispute.

10. Members of the judiciary enjoy all the rights granted to every individual. It is their responsibility to assess if they need to be removed or withdraw when their commitments, of a political, philosophical, confessional or religious nature or within an association, result in restricting their freedom of thought or analysis.

In the performance of their duties, they shall refrain from any attempts to convert others' opinions that may undermine the perception of impartiality needed to perform their duties.

11. Members of the judiciary may not accept any gift or special benefit that may cast doubt on the impartiality with which they perform or have performed their duties.

12. Members of the judiciary must not give legal advice, *a fortiori* by making a point of mentioning their position. When they give an opinion to close friends or family, they shall ensure that this position cannot be highlighted or used again.

13. Members of the judiciary, who are not Internet users like any other, must be vigilant in their use of social networks, particularly when they express opinions under their identity and in the capacity of a judiciary member.

Judges

Judges must be open to and take into consideration all the viewpoints put before them, irrespective of their personal opinions, and disregard any prejudice.

14. Respecting the adversarial principle throughout the proceedings contributes to the impartiality of the court before which the case is brought.

15. With their ability to listen, their responses or the formulation of their questions, judges shall ensure not to create a sense of unequal treatment in the litigant's mind. They must not show any sign of approval or disapproval or comment on the

involvement of counsel or representatives of the public prosecutor. In the reasons given for their decision, they must not use any arguments or expressions likely to cast doubt on the impartiality with which they have settled the dispute.

Public prosecutors

16. Prosecutors must ensure in managing and monitoring inquiries that the investigations are conducted impartially, both for the prosecution and the defence, respecting the rights of each individual.

They shall demonstrate their impartiality by performing the proportionality test on investigative work and by monitoring that evidence is fairly obtained.

The same applies when acting in criminal proceedings and making submissions in order to apply the law.

Presidents of the courts of appeal and courts of first instance

Presidents of the courts of appeal and courts of first instance shall ensure that the principle of impartiality is observed by judiciary members within the jurisdiction of their court.

17. When members of the judiciary are the subject of attacks, especially in the media, which implicate their independence or impartiality, and thus undermining the public's confidence in the courts, the Presidents of the courts of appeal or courts of first instance shall examine and determine the most appropriate measures to put an end to this situation, particularly in view of explanations or observations that the judiciary member concerned has taken care to bring to their knowledge beforehand.

These measures may take the form of personal or public support for the judiciary member.

18. In defining the remits of judiciary members, the Presidents of the courts of appeal or courts of first instance shall ensure the fair distribution of tasks. They shall ensure that the service or sector of competence assigned is not liable to generate possible conflicts of interest.

19. At the time of the ethics meeting, the Presidents of the courts of appeal or courts of first instance shall notably ensure that the judiciary member has taken any measure to prevent any situation liable to give rise to a conflict of interest.

20. The Presidents of the courts of appeal or courts of first instance must ensure that the information related to the personal situations of judiciary members is updated, in particular when they are candidates for a transfer.

Preventing conflicts of interest

Members of the judiciary have a duty of care to prevent any conflict between the duties of their position and their personal interests or those of their close friends and family.

21. A conflict of interest is any situation of interference between a public interest and public or private interests that may influence or appear to influence the independent, impartial and objective performance of a position.

22. In view of the ethics meeting, judiciary members shall honestly reflect on any situation that could appear to create a conflict of interest. To this end, they shall take into account all of their interests as well as the interests or activities of their close friends and family.

23. They shall withdraw, without waiting for any challenge, when a situation may cast legitimate doubt in the minds of the parties or the public on their impartiality related to the existence of a conflict of interest.

24. Concerning their personal commitments, members of the judiciary shall ensure that the legitimate exercise of their rights as citizens and the duties attached to their judicial duties are compatible. They shall behave or speak in public moderately and with caution.

Chapter III

Integrity and probity

Being a member of the judiciary is a position of honour that demands integrity.

1. In their professional practice and in their private lives, members of the judiciary shall demonstrate such qualities of integrity as to render them worthy of discharging their mission, lend credibility to their authority and ensure confidence in justice.
2. Probity, which means an overall requirement of honesty, governs professional practice, behaviour in society and private life.
3. Probity prohibits members of the judiciary from any behaviour punishable by law such as any dishonest behaviour.
4. They shall ensure the proper use of resources entrusted to them to administer justice without any unreasonable or inappropriate use.
5. They shall refrain from seeking any unwarranted intervention for a personal transfer, appointment or promotion or from acting with a view to obtaining a benefit for themselves or another.

They shall refrain from any intervention that is not in line with established practices for managing human resources and which seeks to obtain, through preferential treatment, the promotion of a judiciary member or their appointment to a specific post, except for professional evaluations or recommendations requested in view of a transfer or to access positions *intuitu personae*.

6. They are prohibited from accepting gifts or favours for themselves or their close friends and family at the time of their judicial duties.

Outside of these duties, gifts or favours received due to their position of judiciary member are only permitted to the extent of international or institutional use.

7. They may not use their position to obtain gifts, favours or benefits of any kind for themselves or their close friends or family.

They are prohibited from using this position as well as any medium that may infer this for any private activity.

8. Members of the judiciary shall devote the majority of their professional time to performing all of their duties.

Chapter IV

Fairness

In accordance with their oath, members of the judiciary shall discharge their duties fairly and with concern for human dignity.

Observing the rule of law

Members of the judiciary are governed by the rule of law. Its fair application safeguards against arbitrariness and ensures equality before the law. Although they are no substitute for the legislator, members of the judiciary are responsible for interpreting the law.

1. Members of the judiciary are required to observe the law in their constitutional mission of protecting individual freedom to the extent of their remit.
2. The law means the rules of law applicable in France. It includes international standards introduced into national legislation in accordance with the Constitution.
3. In particular, the duty to uphold the law imposes specific obligations on members of the judiciary in order to ensure careful and comprehensive monitoring when freedom is at stake. This notably applies within the areas of checking identities, questioning, police custody, detention, police searches, imprisonment, interception of private communications, involuntary hospitalisation and legal protection and safety measures.
4. The duty to act fairly requires members of the judiciary to apply the rules of law without exceeding, distorting, avoiding or misusing them.
5. Members of the judiciary must themselves exercise all of their expertise derived from the law, especially with regard to investigative services. They may not pass the responsibility of interpreting the law on to others, in particular experts, mediators, conciliators or court employees (assistant legal practitioners, law clerks, various trainees).
6. Members of the judiciary may not disregard the application of the law for an idea of justice that pertains to personal beliefs.

Fairness in the judicial activity

For all the parties, judiciary members safeguard respect for the proceedings.

7. They shall fairly apply the guiding principles for trial, particularly the adversarial principle and the rights of defence. They shall base their decisions on the elements presented in the adversarial debate, and maintain an open mind.

They shall not misuse procedures to prolong proceedings or defer decisions.

8. In their decisions, judges must fairly apply the law with equal consideration of the parties' arguments.

In the proceedings for which they are responsible, they must refuse to take into account information which they know of unofficially.

In accordance with these obligations, they shall maintain complete freedom of mind when reaching their decision.

9. A judiciary member shall inform the other members of the bench of any facts personally involving him or her that are liable to undermine the perception of impartiality that he or she must present to all parties.

10. In all their professional activities and particularly when directing and monitoring investigations and supervising senior police officers' and police officers' activities, prosecutors shall endeavour to comply and ensure compliance with the principles of criminal proceedings and objectively seek the evidence necessary for establishing the truth.

Honesty in relationships with other members of the judiciary and civil servants

Members of the judiciary have a duty of honesty towards Presidents of the courts of first instance and their colleagues. They shall fulfil this duty whilst respecting their mutual judicial independence.

11. The statutory rules and those of judicial organisation that determine the relationships between judiciary members within courts shall be fairly applied in accordance with the tasks and responsibilities assigned to the Presidents of the courts and the competence and remit of judiciary members.

12. Prosecutors shall ensure that members of their hierarchy are able to exercise their authority by honestly informing them of the existence and development of proceedings.

13. The Presidents of the courts of appeal and courts of first instance have a duty

to assess members of the judiciary in the presence of both parties according to statutory rules.

14. All judiciary members shall honestly assume the responsibilities entrusted to them. They shall assume the restrictions of service and submit to the constraints enabling the proper operation of the justice service.

The Presidents of the courts of first instance shall ensure compliance with this obligation.

15. Members of the judiciary shall maintain honest relationships with each other, respecting their duties and expertise.

16. Members of the judiciary who criticise the behaviour of another shall consider the possibility of discussing their grievances with this member before escalating the matter. If they have to refer to their president, this one listens carefully.

Fairness in administering justice

Presidents of the courts of first instance are responsible for the organisation, administration and budget management of the departments within their jurisdiction. Within the courts of appeal and lower courts, this task is carried out jointly by two authorities with the assistance of the registry directors and administrative departments.

17. In accordance with the consultation and notification procedures, the Presidents of the courts of first instance shall ensure the balanced distribution of services and ensure all members of the judiciary are informed.

18. In the performance of their duties, members of the judiciary shall observe the standards and best practices in force related to the use of public funds and the careful management of justice as a public service.

19. All members of the judiciary shall ensure that the resources made available to them are used for their institutional purpose.

20. Concerning the management of funds belonging to litigants or the retention of property to be administered by the court, such as seized goods, members of the judiciary shall rigorously carry out the checks entrusted to them by law.

21. When they are involved in application procedures for judicial office, members of the judiciary shall issue statements assessing the merits of candidates that they have personally observed.

Chapter V

Professional conscience

Professional competence and good management

The professional competence of members of the judiciary is one of the key guarantees of the quality of the service that they provide. Without this professional competence, the judicial system will not have the public confidence that is essential to legitimise its action. To ensure this competence throughout their careers, members of the judiciary have an obligation to undertake continual training enabling them to develop and update the knowledge necessary both for the performance of their judicial duties and for their managerial, organisational and administrative responsibilities.

1. All members of the judiciary have a duty to be competent.
2. Members of the judiciary shall maintain their professional competence throughout their careers. To this end, they shall fulfil their obligation to undertake continual training. It is their responsibility to update their knowledge and re-examine their practices. Continual training enables them to more effectively take into account both legal and technical developments affecting the handling of cases as well as the social, economic and cultural environment of litigation under their responsibility. If their position should change, they shall follow the individual or collective training initiatives enabling them to maintain their professional competence.
3. Their superiors shall encourage and facilitate, by all means available to them, access to training resources for judiciary members, taking into account the department's needs in the distribution of tasks, missions and appointments. They shall also consider training initiatives when assessing members of the judiciary.
4. Members of the judiciary shall ensure that they update their technological knowledge necessary for performing their tasks.
5. Members of the judiciary shall assume administrative and managerial responsibilities (President of the court, middle management, department coordinator, general secretary, special advisor, etc.) and ensure that they acquire, develop and update all knowledge and knowhow necessary for performing these responsibilities.

Members of the judiciary who perform supervisory duties shall ensure, in discharging their duty to undertake continual training, that they acquire and develop the skills and knowledge giving them an understanding of human resources management and enabling them to prevent or deal with psychosocial risks.

6. Members of the judiciary who leave their post shall ensure to provide their successor with any helpful information to facilitate their successor taking up the post.

Effectiveness and diligence

Members of the judiciary are responsible for diligently carrying out the missions entrusted to them and, as appropriate, notifying their superiors about obstacles that they could encounter in discharging this duty of diligence before any significant deterioration in the service.

7. Members of the judiciary shall handle all cases referred to them without delay or any neglect, to the extent of the resources available to them.

8. Members of the judiciary shall act diligently within a reasonable time period.

9. Litigants' confidence in the judicial system is dependent on judiciary members observing this obligation and it avoids, for the State, the risk of any action for damages.

10. They shall ensure the flow management and handling of cases within a reasonable timeframe, compliance with procedural and substantive rules and the quality of the service provided to the litigant.

10 & Members of the judiciary shall rule within the given deadline, irrespective of any imperfections, contradictions or loopholes in the law.

12. Members of the judiciary shall carry out the checks entrusted to them by law, particularly the supervision of departments that manage funds belonging to litigants or departments responsible for holding property to be administered by the court, such as seized goods.

13. Members of the judiciary shall use technologies to improve the quality of justice provided that this does not infringe the rights and freedoms of litigants.

14. The Presidents of the Courts of Appeal and courts of first instance are responsible for the organisation, administration and budget management of the departments within their jurisdiction. This mission carried out with the assistance

of the registry directors and administrative departments, requires judges and prosecutors to consult with each other and seek common solutions.

The Presidents of the courts of appeal and courts of first instance shall ensure, to the extent of the budgetary and human resources granted to them, that the allocation and distribution of resources provide judiciary members with the conditions necessary to discharge their duty of diligence.

Chapter VI

Dignity

The duty to respect dignity stems from the oath taken. It requires colleagues and employees to conduct themselves and converse with third parties in a manner compatible with the position of judiciary member.

1. Members of the judiciary must refrain from using expressions or comments in their written and spoken communications that, due to their form or unreasonable nature, are likely to undermine the image of the judicial system.
2. Judicial freedom does not authorise the use of words contrary to dignity.
3. Members of the judiciary have the right to privacy. Nevertheless, their public speaking and conduct requires caution in order not to undermine the dignity of their position and the credibility of the judicial system.
4. Members of the judiciary must be aware that even if certain deceptive processes are unlawful, current means of dissemination enable spoken and written communications, images or acts to be published or relayed, even if this was not initially the intention.

Chapter VII

Respect for and attention to others

Members of the judiciary shall show tact in their relations with litigants, witnesses, persons involved in the administration of justice and partners of the judicial institution, by behaving in a way that respects an individual's dignity and by listening to others. Tactfulness means the behaviour of a person who shows the qualities of restraint, discretion and consideration for others.

Respect for the litigant

1. Members of the judiciary are prohibited from using misplaced, condescending, humiliating, discriminatory, threatening or contemptuous gestures, speech, expressions or comments, whether written or spoken.
2. As required, public proceedings guarantee the proper conduct of the hearing. Members of the judiciary shall not tolerate any spectacle or be distracted from their duties. They shall ensure that the parties, lawyers and public observe basic rules of courtesy.
3. Judges overseeing proceedings or directing court hearings, and prosecutors acting in criminal or civil matters, shall do so with authority that is respectful of individuals.
4. Any member of the judiciary who observes discriminatory language and/or language punishable by law during a hearing shall stop it and have it placed on the record so that the necessary action can be taken.
5. Presiding judges have a general duty to explain. They shall ensure that each litigant has clearly understood the respective role of each professional.

Respect for other professionals of the judicial system

6. In exercising their position of authority, members of the judiciary shall respect those whom they address, in particular other judiciary members and staff members of the court's registry and all those who assist in administering justice.
7. Members of the judiciary shall respect and ensure respect for the position of the court clerk who records and witnesses their actions and words. The presence of

court clerk, *a fortiori* when they are provided for by law, is security for the individuals appearing, and for the judiciary members themselves.

8. Members of the judiciary shall ensure that their presence within the court meets the needs of the service, the constraints of the staff members of the court and those of other professionals of the judicial system.

9. The Presidents of the courts of appeal and courts of first instance shall ensure that members of the judiciary respect staff members of the court and persons involved in the administration of justice placed under their authority and vice versa.

10. Members of the judiciary shall ensure that persons involved in the administration of justice can exercise their legal remit to the full. They shall respect their professional secrecy.

11. At the hearing and for any meetings, punctuality and respect for others, in particular judiciary members, lawyers and litigants, are conditions for the judicial system to run smoothly. The presiding judge will ensure the proper conduct and time management of the hearing ensuring that each individual, whether the public prosecutor, party claiming damages, defence, witnesses or experts, has in turn the opportunity to speak freely and without any pressure or intimidation.

12. The presiding judge shall ensure respect for collegiality and the comments of each member of the judiciary who has a vote and shall submit to the decision of the majority. The presiding judge shall oversee the deliberation.

13. The anonymity that the secrecy of deliberations confers and which prohibits holding any individual responsible does not authorise the abuse of authority by a member of the judiciary.

Attention to others and the entirety of proceedings

14. Attention to others demands a receptive mind and a real ability to question oneself and accept in advance the risk of being criticised.

15. Members of the judiciary are expected to pay attention to others. It is a quality to be maintained by practice and forms part of their training.

16. Members of the judiciary shall ensure that their oral and written communications are intelligible for everyone, irrespective of their culture, situation or status.

17. At the hearing and during deliberations, members of the judiciary shall show that they are listening to their colleagues (reading of the report, prosecution's submissions, opinions during deliberations, etc.), and to counsel's address or the

parties' statements. They shall remain vigilant, while ensuring the smooth running of proceedings, and avoid showing impatience, and adopt a calm attitude at all times. Parties and counsel are free to choose their mode of defence, but this is restricted by the judge's obligation to act with impartiality to ensure respect for individuals and uphold the dignity of the hearing.

18. In all circumstances, members of the judiciary shall remain neutral. They shall not show any personal feelings, sympathy or antipathy towards persons involved in the cases they hear.

19. Members of the judiciary shall endeavour to create conditions that encourage mutual listening and shall act with tact and humanity. The failure of persons involved in the administration of justice to fulfil their duties shall not release members of the judiciary from theirs.

20. In long and complex proceedings, members of the judiciary shall remain vigilant, be careful not to form fixed opinions and show that they are listening attentively even when it is late.

21. Both at the time of their institution and when processing proceedings, members of the judiciary shall ensure that the dematerialisation of proceedings and use of information and communication technologies, in particular videoconferencing, do not adversely affect the rights of parties and their counsel, or their right to be listened to.

22. Members of the judiciary have a duty to participate in court life.

General meetings and select committees are forums for institutional debate about all important matters concerning court life.

Members of the judiciary shall take part in general meetings. However, if they are unable to attend, they shall authorise a colleague to represent them. They shall therefore give their attention to the entire court and its representative bodies, and thus all of the working community.

In order to promote these bodies, judiciary members must be able to speak freely within them, mindful of showing tact and listening to other participants. Questions regarding the organisation and running of the courts must be discussed there under the conditions laid down by the Code of Judicial Organisation in order to enrich each participant's independent thinking and ensure that the court is run as efficiently as possible.

23. The Presidents of the courts of first instance shall implement the values of listening to and respect for others and ensure that these are shared by all members of the court.

In organising departments, they shall ensure a fair and equitable distribution of responsibilities and burden.

Chapter VIII

Restraint and discretion

Through their discretion and restraint, members of the judiciary ensure that they protect the image of the court.

1. When speaking publicly, members of the judiciary shall show moderation to avoid compromising the perception of the court's impartiality that is essential for maintaining public confidence.

This requirement is imposed irrespective of the means of communication used.

2. Members of the judiciary are prohibited from showing any hostility towards the principle and form of the Government of the Republic, as well as any political demonstration that is incompatible with the restraint that their role requires.

3. Members of the judiciary may speak freely within the limits of their position.

4. Members of the judiciary remain bound by their ethical obligations when they legitimately exercise the rights granted to any individual.

5. The duty to show restraint is the same for both judges and prosecutors.

6. Outside of institutional communications specific to the court and communications of a scientific or educational nature, members of the judiciary shall not comment on or add to their own decisions, the statement of reasons of which should suffice. They shall not criticise the court decisions of their colleagues, which may be challenged by appeal.

7. Members of the judiciary, bound by professional secrecy and the secrecy of deliberations, shall observe the confidentiality of court hearings and proceedings discussed in their presence. They shall not disclose the information of which they have knowledge, even anonymously or anecdotally.

8. Members of the judiciary must effectively use means of communication, especially to enable a better understanding of court action. In their relations with the media, they shall ensure that open and public institutional communication prevails and shall not criticise the institution or their colleagues, even anonymously. Communications must not under any circumstances be misused for promotional purposes or those of personal interest.

9. Members of the judiciary shall refrain from discussing cases liable to come before them, even with caution and moderation. Subject to the provisions allowing prosecutors to make factual elements of proceedings public, whilst they do not concern any assessment of the merits of the accusations made, judiciary members shall not communicate individually with the media on the cases brought before them.

10. The duty of restraint does not preclude members of the judiciary from participating in drafting legal texts. As a law professional, it does not preclude them from freely analysing texts.

Nor does it prevent judiciary members from adopting a public, individual or collective position.

Members of the judiciary shall not support or promote any group or organisation, the values of which are incompatible with their position.

Although members of the judiciary may stand for election to the extent laid down by law, they shall ensure that their political undertaking and public communications do not harm the impartial discharge of their duties.

Members of the judiciary, when expressing themselves in their official capacity via any media accessible to the public, must show the utmost caution in order to avoid harming the image and credibility of the judicial institution, the impartial discharge of their duties or the restraint that such duties require.

The same is true for members of the judiciary publishing their own professional memoirs.

Conclusion

In general, compliance with the ethical obligations defined in this Compendium should lead judiciary members to refer to a general principle of caution to avoid breaching the obligations of their position.

Without giving into inhibitions or losing the courage that performing their duties requires, they must, to this end, take into consideration not only the situations with which they are confronted, but also the perception that the parties and the public may have of these situations, always ensuring that they protect the identity and authority of the judicial system.

Within this process, they may seek the opinion and advice of third parties in accordance with the confidentiality obligations by which they are bound. The Presidents of the Courts of Appeal and courts of first instance, the ethical support and monitoring service of the High Council for the Judiciary or the judiciary's ethics board [*collège de déontologie de la magistrature*] may specifically be consulted.

Beyond this principle of caution, the ethical obligations of judiciary members are not limited to preventing misconduct and breaches. The ethics of judiciary members must primarily be driven with concern for the independence and quality of the judicial system, of which they form the basis.

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Introduction

At the time of revising the Compendium of the Judiciary's Ethical Obligations, the High Council for the Judiciary [*Conseil supérieur de la magistrature*] which is responsible under organic law for drafting this publication, wished to remove from the compendium itself comments and recommendations that characterised the version published in 2010.

This approach firstly meets the need to refocus the compendium on the essential values and principles of judicial conduct that must guide members of the judiciary.

It also intends to give a more innovative presentation of the comments and recommendations based on a thematic approach guided by consideration of practical situations with which members of the judiciary may be confronted.

It is indeed apparent that these situations do not necessarily question an isolated principle but may bring into play a multitude of values which should then be combined together.

This is why the Council wished to provide files, made public here. They should not be regarded as having any normative nature but as examples of many situations that judiciary members may encounter in their professional or personal life.

The best practices, comments, guidelines and recommendations that appear result in particular from observing situations actually experienced, brought to the knowledge of the Council via various channels (ethical support and monitoring service, information missions, advisory committee dealing with complaint of citizen, reviews of files and practice of examinations in the appointment activity, etc.).

The topics addressed have been defined based on the needs of judiciary members, as identified by the same means.

The following are thus addressed:

- members of the judiciary, information and communication technologies;
- members of the judiciary and their close friends and family;
- members of the judiciary and their other activities;
- members of the judiciary and their commitments;
- members of the judiciary brought before the court;
- members of the judiciary at the hearing;
- management;
- members of the judiciary and their careers;
- members of the judiciary and local authorities;
- members of the judiciary, lawyers and other persons involved in the administration of justice (court bailiffs, court-appointed administrators or liquidators, etc.).

In each case, the scenarios considered do not in any way intend to provide complete solutions or to cover every aspect of the topic addressed. They are as much indications that may not exempt members of the judiciary from personal in-depth thinking, supplemented as

required by discussions with their ethics contact points (Presidents of Courts of Appeal or courts of first instance, ethical support and monitoring service, the judiciary's ethics board), each situation calling for a specific response that takes account of the particular case.

The format chosen will enable the Council to supplement and develop these files in order to take into consideration the topical and changing nature of ethics and best meet the requirement of quality that must guide the administration of justice.

Members of the judiciary, information and communication technologies

Members of the judiciary, like any individual, enjoy freedom of expression subject to respecting their oath and in particular their duties to show restraint, impartiality and tact, and respect for professional secrecy and the image that they reflect of the judicial system.

The freedom of expression of judiciary members is accepted both nationally and internationally. Restrictions that may be placed on this under the duty to show restraint are assessed in concrete terms by the supreme courts. Other limits to this freedom arise from judiciary members' respect for the presumption of innocence and the duty to be impartial.

The obligation to show restraint may not be used to keep members of the judiciary silent or make them conform, but must be compatible with the specific duty of independence and impartiality of judiciary members.

Even when judiciary members are not themselves active within the media or on social networks, the development of information and communication technologies exposes them to an increased risk of their decisions, statements or behaviour being questioned or covered in the media, leading them to be increasingly vigilant concerning respect for their ethical obligations. The constant and rapid development of communication technologies assumes on the part of judiciary members, individually and collectively, that they shall constantly re-examine the precautions that such vigilance involves.

If they belong to social networks through their private life and under the right to the freedom of expression previously stated, their use requires caution and a good understanding of the conditions of use and of how these networks operate. The same applies to the use of communication spaces and private forums on which members of the judiciary may discuss their professional practices and help each other reducing the isolation specific to certain duties.

Electronic mail and communications

In the performance of their duties, members of the judiciary may use electronic messaging or communications as part of their relations with colleagues, court officials, the persons involved in the administration of justice and various government departments.

They shall ensure that they remain courteous in these exchanges, being aware that their immediacy may sometimes, for convenience, lead to the drafting of abrupt expressions that may be sources of misunderstandings or offend the recipient.

In their correspondence, members of the judiciary shall therefore endeavour to ensure that in addition to the content, the form is not aggressive or harassing in nature, *a fortiori* in the exchanges with individuals under their authority or at the time of sending instructions to external departments.

In choosing their recipients, they shall ensure no inappropriate dissemination takes place. Omitting a natural recipient from a group message or sending a message that criticises the main recipient and copying in a large circle of people may be humiliating or perceived as such.

When the message relates to proceedings (instructions within the framework of the prosecution's office, messages to the registry, etc.), members of the judiciary shall ensure not to abandon their objective impartiality.

It is prudent to use the work email solely for professional activities as far as possible.

Discussion lists

Participation in discussion lists, in particular functional, is increasingly frequent and enables exchanges about legislative changes or case law. It contributes to combatting the isolation of judiciary members.

However, in addition to observing specific discussion charters for each of these lists, members of the judiciary shall exercise the caution necessary in these exchanges. They shall be aware that many discussion lists are neither secure nor encrypted, the registration rules for these lists not always ensuring that the subscriber is a legal professional.

Discussion about a legal issue does not dispense the need to respect professional secrecy. If factual elements are addressed to outline the issue, they must not allow the parties to be identified. In the same vein, before circulating a court decision on a discussion list, members of the judiciary shall ensure that parties' personal data is protected.

The use of discussion lists does not exempt members of the judiciary from verifying the relevance of the legal information thus obtained in accordance with their duty to uphold the law.

As is mentioned in the vast majority of user charters for these discussion lists, an exchange on this list is not intended to be transmitted to a third party.

Social networks

Nobody is shielded from the extremes and abuses of social networks. Even if they are not active on them themselves, the behaviour of judiciary members may be publicised in this way.

It is thus frequent that comments, behaviour at the hearing or opinions expressed at the time of conferences or symposiums are recorded, disseminated or relayed on social networks without members of the judiciary knowing, giving them a public nature, and are used to question their impartiality or respect for their ethical obligations.

When members of the judiciary use social networks, this use must comply with their ethical obligations.

The degree of caution is assessed differently depending on whether judiciary members speak publicly on social networks without mentioning their position in order to deal with topics that have nothing to do with their professional activity or, to the contrary, mention their position in order to comment on judicial or legal issues.

In any case, they shall keep in mind that they may be identified. They shall enquire about the level of confidentiality and publicity of their publications beforehand.

When creating their profile (name or pseudonym, photographs or related pictures, short biography, decision on whether to state their position as a judiciary member, etc.) and in the "editorial line" of their accounts, they shall ensure to observe their duty to respect dignity, not make abusive or tactless comments and not send a picture that may harm the institution.

The supposed anonymity that certain social networks provide shall not release members of the judiciary from their position, in particular their obligation to show restraint, a guarantee for litigants of their impartiality and neutrality.

Use of social networks by members of the judiciary sitting on cases or making closing speeches, during or at the time of a hearing is clearly incompatible with such duties.

Even when the use of social networks aims to convey a more human image of the position, notably through illustrations, the oath of judiciary members prohibits them from mentioning individual situations that they have handled in a manner that would enable them to be identified.

They shall remember that their comments are still likely to reach a larger group than that of their direct correspondents, by means of sharing, screenshots or montage. Any message disseminated on social networks is immediately out of its author's hands and may be widely circulated without the author's authorisation, even if the author has deleted it.

Whereas the word "friend", used to refer to individuals who agree to be connected on social networks, does not refer to friendship in the traditional sense of the word, the existence of connections between "friends" is not enough to identify any bias. It is

nonetheless prudent to avoid accepting an individual as a "friend", the case of whom the judiciary member has, or had, under his or her responsibility.

Scenario where members of the judiciary use social networks under their real name

Even if they do not make any reference to their position, members of the judiciary are directly identifiable by third parties.

When they refer to their position, notably when creating their profile ("identity card") and in their messages, they shall ensure not to raise any doubt over their impartiality in the litigation they are handling.

Scenario where members of the judiciary use social networks under a pseudonym

As members of the judiciary are nonetheless identifiable by cross-checking, the same requirements apply.

Anonymity does clearly not release them from their ethical obligations. They shall therefore maintain a tone that is compatible with their duties and position.

When members of the judiciary comment on social networks anonymously, it is prudent to only make comments that they are able to assume responsibility in case they should be identified.

Scenario where members of the judiciary manage the account of a court or President of the court

The communication is then institutional and shall observe the same rules of perceived impartiality. It shall not make any positive or negative assessment of a decision that has been given.

Media

Members of the judiciary who communicate shall ensure to undertake professional training in order to master communication techniques, in particular that given by the *École Nationale de la Magistrature*.

A distinction should be made depending on whether they are commenting on an individual matter or the institution.

Communication at the time of handling an individual case

Members of the judiciary are bound by professional secrecy as well as a duty of discretion, which guarantees their image of impartiality.

In criminal matters, the *Procureur de la République* [public prosecutor at the courts of first instance] is authorised to comment on the facts of the enquiry, to the extent of Article 11 of the French Code of Criminal Procedure. He or she shall ensure in this respect to only communicate factual elements in accordance with the parties and their rights.

When their court or judiciary members within their jurisdiction are unfairly implicated, it is the responsibility of the Presidents of the courts to examine the most appropriate means of defending the independence and impartiality of the judiciary members concerned, as needed via a public statement. They may at this time be reminded of the principles of independence of the court and the procedures applicable to this particular case may be explained.

If they are required to comment on a closed case that had a public hearing in which they were involved, judiciary members shall endeavour to have an objective connection with it, avoiding mentioning any personal feeling or view.

Communication on the running of the institution

Just as members of the judiciary communicate to the community and civil society by means of official sittings [*audiences solennelles*] or as part of legal advice, members of the judiciary may also speak in the media with an educational focus in order to improve understanding on how the institution is run.

The visual or audio recording of a hearing is prohibited unless specifically authorised under the conditions laid down in Articles L. 221-1 to L. 222-3 of the French Heritage Code, and Article 308 paragraph 2 of the French Code of Criminal Procedure. In such circumstances, members of the judiciary shall ensure that they respect the dignity of parties and the identity of the institution.

For further information

CSM activity report, year 2012, pages 201 et seq.

Opinion given by CSM on 26 November 2014 on referral of a case to the Minister of Justice

ECHR, 16 September 1999, *Buscemi vs. Italy*

ECHR, *Baka vs. Hungary*, 20261/12, 27 May 2014, and Decision of the Grand Chamber of 23 June 2016

Members of the judiciary and their close friends and family

The ethics of judiciary members requires them to take into consideration the nature and intensity of the relationships they have, or have had, with various members of their circle of friends and family. The most diverse connections thus established, sometimes long-standing, may be perceived by litigants and persons involved in the administration of justice as incompatible with the respect of ethical requirements that are as fundamental as independence and impartiality, guaranteeing the equal treatment of all before the court and law.

Several texts provide a legal definition based on objective criteria, prohibited situations (e.g. due to family ties) as well as procedures to be implemented: members of the judiciary withdrawing or a recusal application by the party concerned.

In addition to the application of legislative provisions, which could not govern in advance the wide variety of concrete situations, members of the judiciary shall assess on a case by case basis their competence to rule consciously, free of any pressure of any kind whatsoever.

In this assessment, they shall bear in mind that the concept of "close" can mean any person that may be perceived by a third party as forming part of their circle of friends or family.

In this delicate situation, the code of practice requires judiciary members to bear in mind that none of their ethical obligations can be disregarded for the sole reason of citing a separation between professional life and private life.

Incompatibilities of a family nature

Nobody may be appointed as a member of the judiciary or remain in a court within the jurisdiction of which all or part of a *département* is based for which their spouse is a member of the national assembly or a senator.

Spouses, parents or relatives of up to the third degree may not, unless made exempt, be simultaneously members of the same court, whether they are judges or prosecutors. If an exemption is possible, notably within large jurisdictions, they are strictly prohibited under all circumstances from sitting on the same case. No exemption may be granted when the court only includes one division or when one of the spouses is the President of the court or the public prosecutor at this court.

Under no circumstances, even if the exemption is granted, may the spouses, parents or relatives mentioned in the first paragraph sit on the same case.

In order to apply this rule, a person related to the judiciary member by a registered civil partnership is considered as a spouse.

In addition to this legal obligation, the code of practice imposes a similar approach in the case of cohabitation or a common-law relationship.

It is the responsibility of any member of the judiciary to keep their superiors informed of their family or marital situation, who are responsible for checking compliance with these requirements.

Cases of recusal

Article L. 111-6 of the Code of Judicial Organisation, applied generally except in the case of provisions specific to certain courts, sets out nine cases of recusal.

Objective situations are firstly referred to, defined by specific criteria, in which members of the judiciary are deemed to maintain, or have maintained, relations with a party that are incompatible with the requirement for independence and impartiality:

- relationships by blood or marriage,
- economic ties, such as a creditor-debtor relationship,
- employer-employee relationships, such as a contract of employment,
- any current or past proceedings.

The other cases of recusal provided for in the same article call for a more subjective assessment:

- friendship or animosity between the member of the judiciary and one of the parties that is common knowledge,
- personal interest of a member of the judiciary in the dispute,
- conflicts of interest.

The law requires the concrete situation to be assessed taking into consideration not only the relationship of the judiciary member and the party concerned but also that of his or her respective spouse, who definitely come under the category of "close friends and family".

As the legal provisions of the Code of Criminal Procedure have the same purpose (Article 668), they have a similar structure. Common-law partners are expressly considered therein as a spouse or partner related via a registered civil partnership.

The Code of Civil Procedure (Article 341) refers to Article L. 111-6 of the Code of Judicial Organisation related to the causes of recusal. It also deals with members of the

judiciary withdrawing: "The judge, who deems that there exists as regards to his person grounds of recusal, or who thinks consciously that he must abstain, will have himself replaced..." (Article 339).

Members of the judiciary must therefore demonstrate particular care in identifying in due time any reason for recusal and take action concerning their withdrawal. If there is any doubt, they shall not hesitate to seek the opinion of the President of the court and discuss the matter with their colleagues on the bench. Ethics meetings are the ideal times to identify any difficulties.

Accompanying a close friend or relative at court

A member of the judiciary asked by a "close" friend or relative to accompany them to and advise them at proceedings in the capacity of a friend or family member, may provide their assistance on three conditions:

- the assistance provided by the judiciary member is clearly separate from the activity of giving legal advice,
- it is free of charge,
- it does not enable a litigant to cite the support of a judiciary member who is a "close" friend or relative in order to influence the course of justice, whether verbally or in writing, *a fortiori* under the letterhead of a court.

A statement is therefore permissible when it is not drafted using language that puts pressure on the judiciary member receiving it.

Limits on separation between private and professional life

Like any individual, judiciary members have the right to respect for their private lives. However, their actions and gestures may be observed by third parties without them always being aware of it. Whether it is tolerated, disregarded or desired by members of the judiciary, this growing transparency with the development of social networks has created specific duties for them.

They shall ensure that any conflicting relationships with members of their circle of friends and family do not expose them, by their nature and local impact, to a complaint due to breach of the dignity required of the position of judiciary members.

Similarly, they shall ensure not to keep company that may lead them to support or give the impression that they support reprehensible activities.

For further information

Order No. 58-1270 of 22 December 1958 concerning the organic law on the status of the judiciary: Article 7-1

Code of Judicial Organisation: Articles L.111-6, L. 111-10, L. 111-11

Code of Criminal Procedure: Article 668

Code of Civil Procedure: Articles 339 and 341

Members of the judiciary and their other activities

In addition to all of their court and administrative tasks, judiciary members may carry out multiple activities.

Some of these have an ancillary nature. They are organised by specific legislation providing for the participation, in particular as an ex-officio member, of members of the judiciary in various bodies (independent administrative bodies, panels of judges, boards, various commissions and committees). In the performance of these tasks, members of the judiciary are subject to specific ethical rules and obligations that should be referred to. Nonetheless, they remain bound by the ethical rules for their position.

Other activities are not carried out by members of the judiciary in their official capacity, but by personal choice. This broad category includes all kinds of activities. Among those, union and association activities require specific consideration that will be addressed under the heading Members of the judiciary and their commitments.

The remaining activities are those carried out alongside the judiciary member's job, sometimes with no link to legal expertise. The statutory order of 22 December 1958 does not disregard them but refers to them in a very general manner in provisions spread throughout the order. To describe them, we will distinguish between concurrent activities carried out by judiciary members in normal positions of activity, and the activities of judiciary members in specific positions.

Concurrent activities of judiciary members in normal positions of activity

Concurrent activities may involve professional or private activities that are paid or voluntary. Some concurrent activities are subject to authorisation. Others may be carried out with no restriction.

In all cases, these activities must be carried out in accordance with the ethical obligations referred to in this compendium.

Members of the judiciary who are contracted out or released from an activity for union reasons, whether on a full-time or part-time basis, are in a position of activity with regard to Article 67 of the statute. To this end, they must observe the incompatibilities provided for in Articles 9 et seq. of the same statute.

Concurrent activities subject to authorisation

Concurrent professional activities of judiciary members are strictly supervised. Discharging the duties of judiciary members is, in principle, incompatible with carrying out any other public duties and any other professional or salaried activity. This requirement, set out in Article 8 of the statutory order, is to be understood as laying down a general principle of non-concurrent paid activities, for which exemptions are listed.

Paragraph two of Article 8 of the statutory order adds that "individual exemptions may be granted to members of the judiciary by decision of the Presidents of the Courts of Appeal, in order to give lessons falling within their expertise or to carry out duties or activities which are not liable to undermine the dignity of judiciary members and their independence".

Arbitration activities are prohibited, subject to the cases provided for by the legislation in force.

For the other activities, exemptions must be granted with the utmost caution. Incompatibility is absolute for activities requiring registration to a professional, trade or commercial social regime, whether or not in areas related to legal professions.

Members of the judiciary who consider carrying out an activity that comes under an exemption must lodge a request for authorisation with the President of the Court of Appeal beforehand. If the procedures for carrying out the activity change, they shall inform the President of the Court of Appeal in due time. For their part, the Presidents of the Courts of Appeal shall check the nature and scope of the duties planned, and shall only authorise those that do not pose any risk to not only the position of the judiciary member and their independence, but also to their availability. Once authorisation is granted or renewed, members of the judiciary must perform their duties in accordance with the ethical obligations related to their position.

More specifically, regarding the obligation of diligence, the simultaneous activity may not encroach upon the availability of judiciary members to the point of disrupting their service. Finally, academic freedom does not authorise members of the judiciary to neglect their duties of fairness, restraint and respect for professional secrecy when teaching.

Concurrent activities not subject to authorisation

Members of the judiciary may "without prior authorisation" "devote themselves to scientific, literary or artistic works" (Article 8 of the statutory order). This work must be carried out under conditions that do not undermine the duties of judiciary members.

Without forcing members of the judiciary to publish under a pseudonym, it is preferable that their position is not mentioned when it has no connection with this work.

Declaration of interests

Whether or not the concurrent activities are subject to authorisation, certain activities must be mentioned in the declaration of interests instituted in Article 7-2 of the statutory order, which covers a broad spectrum, regarding their nature (paid, benefit received or voluntary), the sector concerned (public or private), as well as the individuals concerned (judiciary members, their spouses, partners or common-law partners).

Outside of the criminal sanctions incurred, this legislation establishes specific ethical obligations, both with regard to members of the judiciary who submit it and the authority that receives it.

In their declaration, members of the judiciary are bound by an obligation of honesty and completeness. However, they are only required to declare their personal activities and commitments as far as they are likely to create a conflict of interest. The declaration does not exempt them from requesting authorisation for the activities listed in paragraph 2 of Article 8 of the statutory order. It is their responsibility to organise the services so as to avoid the occurrence of a conflict of interest.

The head of courts who receive the declaration are bound by an obligation to provide information and of prevention. During the ethical meeting, they must inform the declarant about possible conflicts of interest. Where appropriate, they have to ask them to put an end to them. In case of any doubt, the competent ethics board must be referred to so as to avoid situations arising that may put the judiciary member concerned in difficulty. It is their responsibility to organise the services so as to avoid the occurrence of a conflict of interest.

Activities carried out outside of a normal position of activity

Members of the judiciary on leave of absence or who are retired or fee-paid, such as judiciary members working on a temporary basis, may carry out the activities of their choice, subject to the restrictions laid down by the statute.

Members of the judiciary not in active service

The statutory order states that the Minister of Justice must be informed beforehand by members of the judiciary on leave of absence when they want to carry out a private activity out of the judiciary. The authorization is given for five years. Judiciary members who have permanently ended their duties must inform the Minister of Justice as well. As the Minister of Justice may oppose this activity "when this Minister deems that it is contrary to the honour and integrity, or that, due to its nature or the conditions of its performance, this activity would compromise the normal running of the judicial system or would discredit the duties of judiciary members", a duty of honesty requires the judiciary members concerned to inform the Minister of Justice not only of the beginning of the activity, but also of any change in its conditions of performance.

Honorary judiciary members performing judicial duties

Honorary judiciary members discharging judicial duties may carry out a professional activity at the same time as their judicial duties, provided that this activity is not likely to undermine the dignity of the position and their independence.

Within the jurisdiction of the first instance court or the court of appeal where they perform their judicial duties, they may not carry out an independent legal or judicial profession governed by a legislative or regulatory instrument or whose title is protected, or be employed by a member of such a profession. They may not carry out any activity of their profession within the jurisdiction of the court to which they are assigned.

Without prejudice to the application of paragraph 2 of Article 8, honorary judiciary members performing the judicial duties mentioned in Article 41-25 may not simultaneously carry out an activity of a public official, with the exception of that of university lecturer and senior lecturer".

Honorary judiciary members not performing judicial duties

Honorary judiciary members who are not performing judicial duties are more limited in respect of concurrent activities, since they may not "carry out an independent legal or judicial profession governed by a legislative or regulatory instrument or whose title is protected, or be employed by a member of such a profession, or carry out any activity of their profession within the jurisdiction of the court to which they are assigned".

Members of the judiciary working on a temporary basis

Members of the judiciary working on a temporary basis are authorised by Article 41-14 of the statutory order to concurrently perform their duties alongside a professional activity, "provided that this activity is not likely to undermine the dignity of the position and their independence". An obligation to provide information is imposed on them in case of a change in professional activity.

If no prior authorisation is officially required, these activities must be stated at the time of the application to enable the High Council for the Judiciary to give an informed opinion.

In addition, these activities fall within the scope of those that must be declared in order to prevent conflicts of interest. At the time of the ethics meeting, the authority that receives the declaration must draw the attention of the judiciary member to the conditions of performance and refer to the ethics board in case of any doubt over compatibility with the tasks entrusted to this judiciary member.

For further information

1. Internationally, the principle of non-concurrent activities whether paid or unpaid is established in the Universal Charter of the Judge adopted on 14 November 2017 by the Central Council of the International Association of Judges in Article 6-4, 1, under the heading "Outside activities": "The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge. He/she must avoid any possible conflict of interest. The judge must not be subject to outside appointments without his or her consent."

2. In domestic law, the principle of non-concurrent activities concerns the entire public service, but with various adjustments. To be compared with Decree No. 2017-105 of 27 January 2017 on the performance of private activities by public officials and certain employees contracted under private law who have ceased their duties, concurrent activities and the civil service ethics committee [*commission de déontologie de la fonction publique*].

3. Regarding Article 8 paragraph 2

Constitutional Council, Decision 2001-445 DC, 19 June 2001, Organic Law on the status of judiciary members and the High Council for the Judiciary

Members of the judiciary and their commitments

Members of the judiciary, like all individuals, enjoy the rights and freedoms granted by constitutional texts, in particular freedoms of opinion and expression as well as the freedom of association. Order No. 58-1270 of 22 December 1958 on the status of the judiciary sets out and governs the rights and obligations of judiciary members in this respect.

The commitments of judiciary members, not only the exercise of the aforementioned fundamental freedoms, but also when they do not wish for their commitments to be made public, come under the protection of privacy of which judiciary members must benefit.

Article 12-2 of the statutory order thus notes that the files of judiciary members may not refer to their political, union, religious or philosophical opinions or activities or elements falling strictly within their private lives.

The ethical impact of commitments of judiciary members may result both from the publicity given to the latter and the confidentiality or secrecy that surrounds certain activities.

The involvement of judiciary members in community life without doubt enhances their professional practices enabling them to acquire better knowledge of the environment in which they perform their duties. However, precautions must be taken to avoid any undermining of the principle of impartiality to which members of the judiciary are subject.

The right to organise within the judiciary is granted by the Organic Law of 8 August 2016 on reform of the statutory order. The risks of a conflict of interest must be prevented, as in any other circumstances, by the withdrawal of the judge. Members of the judiciary who speak under the freedom of association benefit from a relaxation in the obligation to show restraint to enable them to fully exercise the freedom of association that implies, by definition, the right to criticise the running of the judiciary.

Political, philosophical and religious commitments

The ethical impact of judiciary members' commitments are often related to the public nature of the latter. This issue is particularly sensitive with regard to political commitments. The compatibility of these commitments with the duties of their position shall thus be assessed with regard to the publicity that judiciary members give or which is given to their commitment.

Article 10 of the statutory order thus states that "any political discussion is prohibited in the judicial body as well as any display of hostility to the principle or the form of the Government of the Republic. Similarly, any demonstration of a political nature is incompatible with the restraint that the duties of judiciary members impose upon them".

In practice, only abusive or deliberately provocative comments as well as those likely to undermine the duty of impartiality by which judiciary members are bound are punishable.

Article 9 of the statutory order lays down the principle of the incompatibility of judiciary members' duties with holding office at Parliament, the European Parliament and the Economic and Social Council. It adds that "the performance of judiciary members' duties is also incompatible with holding office as a regional councillor, councillor of a *département*, town councillor or district councillor, Paris councillor or member of the Corsican Assembly within the jurisdiction of the court to which the member of the judiciary belongs or is posted".

Finally, in accordance with the same Article, "nobody may be appointed as a judiciary member or remain one at a court within the jurisdiction of which they have carried out, within the last five years, an elective public service referred to in this Article or submitted their candidacy for one of these offices with the exception of the office of a European Parliament representative within the last three years".

Members of the judiciary may freely join or commit to a political party. Conflicts of interest must, as appropriate, be resolved by the withdrawal of the judiciary member concerned.

Public support given by active judiciary members to a candidate in a political election may prove problematic depending on the duties carried out by the judiciary members, the jurisdiction of the court where they practise, the nature of the election and possible court cases concerning the candidate who is receiving this support.

In these situations, in case of interference with the judicial activity, members of the judiciary have an obligation to withdraw themselves.

When they wish to stand in elections, it is incumbent on members of the judiciary to take into consideration the requirements related to their service and identify with the President of the Court of Appeal or court of first instance the most appropriate organisational arrangements (annual leave, placed on leave of absence, etc.).

The confidential or secret nature of a commitment may pose problems.

The duty of solidarity between members of certain organisations or the existence of a justice system specific to these may give rise to a duty of loyalty that is incompatible with the impartiality by which members of the judiciary are bound.

In general, members of the judiciary shall refrain from making any commitment that may restrict their freedom of thought or analysis. Taking oaths, whether of allegiance or selective solidarity, or vows of obedience involved in belonging to certain philosophical or

religious organisations risks being incompatible with the duties of independence and impartiality of judiciary members.

Commitments within associations

Knowledge of the socio-economic context of the jurisdiction in which judiciary members perform their duties is an essential element of the quality of action and the decisions based on this. In this respect, the involvement of judiciary members in associations for urban policy, access to justice, mediation or educational action is a means to better understand the issues of judicial policies and their impact on the social environment. It also enables other public actors to benefit from the indispensable expertise of judiciary members and better understand the meaning of legal action.

Nevertheless, the participation of judiciary members in partner associations of the judiciary (associations for judicial review, family mediation, educational action, access to justice, victim support, etc.) may, under certain circumstances, breach the obligation of impartiality by which members of the judiciary are bound. It is not prudent for judiciary members to be members of the executive committee of an association to which they entrust procedural measures, except to risk being suspected of financially promoting an organisation of which they are one of the executives. The same applies if members of the judiciary intend, due to their judicial duties, to exercise control over this organisation or over the implementation of the measures that they have entrusted to it. In this respect, it would not seem appropriate for a judge sitting in youth courts to be a member of the executive committee of an association for educational action or accommodation welcoming minors from his or her chambers.

Withdrawal by the judge may make it possible to resolve conflicts of interest or breaches of impartiality that may arise from judiciary members' commitments within associations. Members of the judiciary carrying out a voluntary activity of providing legal information will thus be led to withdraw if they are referred a case concerning an individual that they have met through their association activities.

Nonetheless, it may be insufficient in the event that a member of the judiciary performs managerial duties within an association intervening in a legal field, in particular when he or she is led to represent it and speak publicly on its behalf and when this association works in the field covered by the duties and specific service entrusted to this judiciary member. As a preventive measure, he or she must mention this situation in their declaration of interests and at the related ethics meeting so that a response can be given to the issue of the compatibility of the judicial duties performed and the commitment within the association.

Commitments within unions

The freedom of association of judiciary members is upheld by early and established case law of the High Council for the Judiciary and the Council of State, and was recently laid down by the Organic Law of 8 August 2016 on reform of the Statutory Order of 22 December 1958.

Article 10-1 of the statutory order guarantees the freedom of association of judiciary members who may freely form and join union organisations and hold office within them.

Article 7-2 of this same order states that "the declaration of interests of judiciary members shall not mention any political, union, religious or philosophical opinions or activities of judiciary members, except when their disclosure results from the declaration of duties performed or offices held publicly". This declaration of interests shall notably concern the voluntary activities that may give rise to a conflict of interests as well as the duties performed and offices held on the start date.

Therefore, union commitments of judiciary members may not in themselves be incompatible with the duties of their position, in particular with the obligation of impartiality by which they are bound.

It is nevertheless the responsibility of judiciary members, who are members of a union organisation, to withdraw from a case in which this union is a party in order to prevent the risk of a conflict of interests.

Although the statutes of the main union organisations jointly stipulate that they intend to defend the moral and material interests of their members, the majority of them also aim to defend the independence of the court, which leads them to intervene in public or political debate, e.g. at the time of political-media cases or various events giving rise to court proceedings.

By breaching the obligation to show restraint, any criticism liable to undermine the confidence and respect that the position of judiciary members should bring about for litigants is likely to be punished by disciplinary bodies. However, a union organisation's denunciation of judicial failings must be considered with regard to the relaxation of the duty to show restraint from which judiciary members benefit when they speak in a union capacity, provided that the comments made are not disparaging or abusive.

Positions adopted by a union organisation may not serve as a basis to compromise the impartiality of a judiciary member for the sole reason that this individual is a member of this union organisation.

Members of the judiciary brought before the court

Members of the judiciary may be required, in a professional or personal capacity, to be themselves a litigant or witness.

They shall not highlight their position. They shall also not suggest that members of the judiciary benefit from privileges.

The same caution is required when a close friend or family of a judiciary member is involved in proceedings.

Members of the judiciary are prohibited from any interference in proceedings which are not brought before them, whether with the aim to influence the course or outcome of proceedings, or simply to enquire about their progress. Even with no ulterior motives, such interference is likely to lead their representative to feel that the judiciary member is trying to put pressure on and the opposing party to feel that this judiciary member is trying to influence the normal course of proceedings.

Therefore, they shall not use their position to acquire exhibits of the proceedings from investigators, court clerks or judiciary members excluding the cases provided for by law.

In addition to civil or criminal proceedings in which a member of the judiciary is involved as a party or witness, certain recommendations should be noted when this judiciary member is heard as part of an administrative enquiry or disciplinary procedure, or when this judiciary member is called on to support a candidate for appointment to the judiciary.

Members of the judiciary who are party to proceedings

In their relationship with the investigative services

Members of the judiciary shall not refer to their duties to avoid their responsibilities or prevent an offence that they have committed being recorded.

If they have legitimate reasons to dispute a report or court decision, they shall exercise the legal avenues open to any litigant.

When they are required to report an offence, they shall do so on the basis of facts, aware of the weight that their words may carry in the enquiry once their profession is known, whether or not disclosed by them.

In their relationships with members of the judiciary and officials to which the case is referred

As far as the applicable procedural rules allow, members of the judiciary shall ensure that their case is brought before a member of the judiciary who they do not know.

At the hearing, they shall refrain from any behaviour that may appear as a sign of complicity with judiciary members in charge of the case or the officials assisting them.

In the same way, a member of the judiciary who hears the case of a colleague shall avoid any comments or behaviour that may lead the other parties to think that this judiciary member is giving their counterpart special treatment.

In their relationship with persons involved in the administration of justice

When they are assisted by counsel as part of proceedings concerning them, they shall be careful not to deal with cases of this lawyer or the lawyer's firm.

Depending on the relationship that is established between counsel and themselves and the appearance of closeness that it may convey, it is the responsibility of members of the judiciary to assess how long this should continue for after the proceedings.

Members of the judiciary shall remain vigilant in their relationships with the persons involved in the administration of justice during the enforcement of the decision concerning them.

Members of the judiciary as witnesses

In a private capacity

Members of the judiciary may be called on to testify in proceedings. They shall particularly ensure the truthfulness of their evidence, only providing the hearing with objective facts personally observed.

If they are required to write a statement, although their profession shall appear under the information required, they shall only comment in their capacity as a witness of the events that they report. They shall not cite their position in order to add credibility to their

comments or unduly influence the decision-making of the judiciary member sitting on the case.

In a professional capacity

When they are called upon as a witness in the capacity of a judiciary member who has heard the case (e.g. investigating judge [*juge d'instruction*] cited by one of the parties before the Assize Court) before a trial court, they shall, more than anything else, be aware of the impact of their evidence.

They shall demonstrate caution in drawing up their evidence and be careful to give straightforward views.

Members of the judiciary called before disciplinary proceedings

Members of the judiciary are free to defend themselves.

Although they may notably produce, in support of this, documents or information covered by the confidentiality of investigations or professional secrecy, strictly within the limit of what is necessary for their defence, they are not however released from the secrecy of deliberations.

Professional statements

When they are called on to take part in processes for appointments to the judiciary, members of the judiciary shall respond to the requests of the authority responsible for preparing the request, even if to decline the request to provide a statement.

They shall not write statements purely to oblige and shall provide a truthful statement based on the merits of the candidate.

The same principles shall apply for any statement or any assessment requested for appointments to public or private employment or for access to training.

For further information:

Art. 47, Code of Civil Procedure and Art. 42, Code of Criminal Procedure

Members of the judiciary at the hearing

The public hearing is the best place to show justice has been done, placed under the spotlight of the critic, amplified by the media and social networks.

The judge or prosecutor must be aware that any comments during this process, even if they consider them commonplace or ordinary, may have a particular impact on a litigant who does not necessarily have a command of legal terminology and usage.

As a result, there is a strict obligation for members of the judiciary, both judges and prosecutors, to set an example and observe the duties of their position. This same obligation clearly continues to apply when the bench sits in private hearings.

Prior to the hearing

Members of the judiciary shall study the cases referred to them before the hearing in order to be able to conduct this hearing competently and effectively.

Prior examination of the case also enables legal issues and disputes of the facts to be anticipated, as well as any problems in connection with the obligation of the member of the judiciary to protect the appearance of impartiality.

Members of the judiciary shall withdraw, without waiting for any recusal application, when a situation may cast legitimate doubt in their minds, or the minds of the parties or the public on their impartiality or the existence of a conflict of interest. In case of any doubt, they shall refer the issue for open debate and take care to record it.

When there are grounds to reduce the case list for a busy hearing, judiciary members shall anticipate transfer decisions based on objective criteria (custody in progress, urgency, age of the case, previous transfers, etc.). They shall then contact the parties in accordance with the adversarial principle to mention the possibility of a transfer.

In the areas around the courtroom

Before opening the hearing, members of the judiciary shall observe, in the public areas of the courthouse, behaviour that must under no circumstances be interpreted by the litigant or the public as thoughtless, offhand or biased.

A fortiori when they are robed for hearings, they shall avoid in public any display of familiarity, friendship or animosity between judges and prosecutors, with the court clerk and persons involved in the administration of justice.

During the hearing

The same duty to control their behaviour is imposed when entering the hearing and when leaving for or returning from deliberations.

In addition to the need for apparent impartiality, this control by judiciary members of their attitude and the impression that their manner may give in exchanges with the public prosecutor and lawyers shall also demonstrate their respect for the litigant.

As a result of belonging to a single body and of their functional proximity, judges and prosecutors shall ensure that this does not lead to attitudes and behaviour that may create confusion for the litigant between the duties of prosecution and those of judgment.

During the hearing, respect for the litigant shall also require consideration of the words and tone used.

Where possible, a call of the cases at the start of the hearing enables the workload of the hearing to be assessed and the immediate review of possible requests for transfer. When the hearing clearly has too many cases, it also makes it possible to plan for automatic transfers at the start of the hearing, to avoid the litigant having to needlessly wait for the entire duration of the hearing.

If members of the judiciary only discover a reason for recusal during the hearing, without being able to request their withdrawal beforehand, they shall mention this to the parties and consider as appropriate transferring the case.

In general:

- the systematic refusal or acceptance of parties' requests should be avoided;
- only justified transfers should be accepted;
- necessary investigative measures shall be entrusted to professionals based on objective criteria;
- at the hearing, members of the judiciary shall oversee or participate in proceedings with tact, impartiality and calm authority;
- they shall treat all parties equally, the prosecution, defence, the party claiming damages as well as their representatives;
- reporting judges must not show that they have formed an opinion or imply that the parties' explanations are needless.

The stress related to the nature of a case and the heavy burden or excessive duration of a hearing shall lead members of the judiciary to be particularly vigilant in order to respect and ensure respect for individuals' dignity.

Members of the judiciary shall be attentive during hearings. They shall not show any weariness or perform other tasks during the hearing.

Prolonged discussions between members of the court during an address or submissions should be prohibited: they will inevitably be interpreted as proof of lack of attention to the arguments of the public prosecutor or the parties.

Likewise, the prosecutor must continue to listen during defence counsel's address. Displays of contempt or lack of interest are prohibited. Although public prosecutors may, when they consider it necessary, request to speak again after an address, they cannot be allowed to interrupt a lawyer during the address.

It is the responsibility of the presiding judge of the bench to ensure that public prosecutors do not interrupt lawyers during their addresses and that public prosecutors are not interrupted or disturbed during their submissions.

In their submissions at a criminal trial, prosecutors shall endeavour to reconcile the harshest comments that a case may bring up with respect for the individual. In any case, freedom of speech does not permit insults or vulgarity.

Members of the judiciary shall refrain from any behaviour or comments that undermine the dignity of the party claiming damages, the defendant or accused or witnesses as well as any discriminatory comment with regard to the individual concerned belonging to a group or community.

At the end of the hearing, members of the judiciary shall ensure not to enter into discussions with the parties, persons involved in the administration of justice or the public prosecutor under conditions suggesting that they are gathering supplementary information without the presence of all parties, even if it is a private conversation concerning another case (quiet conversations, etc.).

At the time of deliberations and when giving the decision

At a hearing with a panel of judges, a decision given by the bench immediately after the address, giving credence to the idea that the hearing and deliberation are pointless, should be avoided. Only a free discussion between members of the bench guarantees the reality of the deliberation and review of the arguments put forward by each party.

Whether there is a bench of judges or one sole judge, members of the judiciary shall let it be seen that they only make their decision after listening closely to the parties and after a period devoted to weighing up the opposing interests.

Members of the judiciary shall observe the deliberation dates and ensure the quality of the reasons for their decisions.

Management

Performing managerial responsibilities, at the central administration, in the courts or courts of appeal, as a President of the court, or division or department manager or coordinator, imposes specific ethical and professional requirements.

The obligations of judiciary members entrusted with the duties of President of the Court of Appeal or court of first instance must, in particular, be assessed rigorously, such that the performance of these responsibilities requires conveying a serious and calm image of the judiciary that has respect for others.

These responsibilities which assume, for those performing them, exemplary behaviour and rigour in accordance with these values, on both a professional and personal level, requires them to be available for judiciary members placed under their authority and to monitor their ethics.

Management prioritising a human aspect

The Presidents of the Courts of Appeal or courts of first instance shall endeavour to prevent psychosocial risks, assume responsibility for individuals exposed to them and encourage the latter to speak out.

In the day-to-day performance of their managerial duties, Presidents of Courts of Appeal or courts of first instance and division or department coordinators shall take care to ensure the fairest distribution of tasks, consider the expectations of registry officials, listen and pay attention to others, and be vigilant concerning the quality of life at work.

In safeguarding the quality of human relationships, they shall respect members of the judiciary, staff members of the court and the persons involved in the administration of justice. They shall ensure the quality of relationships between staff members of the court and members of the judiciary.

A management that is concerned about independence

When members of the judiciary are unfairly implicated, particularly by the media, the President of the court shall examine the most appropriate means of defending the independence and impartiality of this judiciary member, as needed via a public statement.

In their relations with public officials and elected representatives, Presidents of Courts of Appeal or courts of first instance shall ensure that they do not take any initiatives or adopt positions that are likely to undermine the independent and impartial performance of duties by members of the judiciary within their jurisdiction.

The Presidents of the courts, mindful of the independence and impartiality of judiciary members within their jurisdiction, shall ensure that the distribution of litigation and department remits does not generate any foreseeable conflict of interest based on information brought to their knowledge by judiciary members.

They shall endeavour, through consultation, to optimise the organisation of departments and the distribution of judiciary members based on workload.

The Presidents of Courts of Appeal and courts of first instance shall facilitate and promote access to training for judiciary members within their jurisdiction, notably by ensuring an appropriate distribution of tasks and remits.

The presidents and presiding judges shall observe the principle of natural judge in the distribution of cases, which excludes any personal choice when assigning it or disregarding the rules and decisions that have been previously set out.

Through the consultation bodies - select and plenary committees, general assembly, permanent review board [*commission permanente d'études*], technical committee of decentralised departments - the Presidents of Courts of Appeal or courts of first instance shall promote transparency and healthy social dialogue. Within these bodies, they shall ensure respect for the freedom of expression and listening to others, with an ongoing commitment to improve the running of the court.

When distributing rooms and organising departments, Presidents of courts shall ensure that they protect the respective independence of judges and prosecutors.

Strict professional management

During the ethical meeting laid down by law, the Presidents of the courts shall ensure that the declarations of interests of judiciary members are complete.

Presidents of courts of appeal as well as department directors and heads of the central administration are required to respect the periodic evaluation of judiciary members. They shall ensure that the assessment procedure observes its adversarial nature, the schedule of operations, the completeness and truthfulness of assessments made on the professional behaviour of judiciary members and their actual potential. To this end, they shall endeavour to gather, as far as possible, the opinions of presiding judges of the bench with whom the judiciary member has worked. When a President of the court of appeal initiates a new precedent in terms of evaluation, he or she shall provide all the necessary explanations alongside this. In the same way, the President of the court of appeal shall endeavour to make transparent the criteria for setting the adjustable bonus.

To ensure that independent authorities run harmoniously on a day-to-day basis, Presidents of Courts of Appeal or courts of first instance shall ensure to include the registry management in any initiative or change to organisations likely to affect the registry.

With the human and material resources made available to them, they shall ensure the diligent processing of the procedures brought before the court. They shall ensure that litigants are properly welcomed in all the courts within their jurisdiction.

As far as possible, they shall take into account the recommendations issued by the Presidents of Courts of Appeal or the General Inspectorate for Justice at the time of inspecting how the court is run.

The Presidents of Courts of Appeal, with assistance from the director of the regional administrative department, shall ensure the fair distribution of human and material resources delegated to the jurisdiction. They shall check compliance with the budgetary procedure and the use of funds allocated.

The managers of operational programme budgets shall be mindful of giving fair consideration to the statement of requirements of other courts of appeal.

In drawing up their biannual activity report, the Presidents of Courts of Appeal shall objectively describe their personal contribution to the organisation, administration and management of their jurisdiction.

The Presidents of Courts of Appeal and courts of first instance shall keep relevant and comprehensive management tools up-to-date that may make it easier, on their departure, for their successors to assume their duties and ensure the continuity of the judiciary service.

For further information:

Evaluation of judiciary members: Article 12-1 of Order of 22 December 1958, Article 19 of Decree 93-21 of 7 January 1993, Annual Circulars on evaluation and listing on the promotion table

Ethical meetings: Article 7-2 of the Order of 22 December 1958, amended notably by the Organic Law of 8 August 2016, Article 11-1 et seq. of the Decree of 7 January 1993, amended notably by the Decree of 2 May 2017, Circular SJ 17-366 of 31 October 2017 and annexes

Permanent Review Board: Decision of 8 December 2014

General meetings of judges and prosecutors, plenary sessions, select committees, plenary committees: Articles R. 312-27 et seq. of the Code of Judicial Organisation for the courts of appeal, R. 212-22 et seq. for the first instance court, D. 221-1 et seq. for the *Tribunal d'Instance*, amended by the Decrees of 8 December 2014, 26 April 2016 and 28 August 2017

Reports of the Presidents of Courts of Appeal: Article 38-1 paragraph 3 of the Order of 22 December 1958, amended by the Organic Law of 8 August 2016

Recommendation of the plenary formation of the High Council for the Judiciary of 26 November 2014.

Members of the judiciary and their careers

Judiciary members' careers form part of a human resources management policy that guides, from the point of view of their respective missions, the High Council for the Judiciary and the Ministry of Justice. Members of the judiciary are nonetheless involved in the progress of their careers, this individual approach being in line with their respect for their ethical obligations.

All judiciary members, at the time of their appointment to their first position and before taking up their duties, shall take the following oath: "I swear to diligently and faithfully fulfil my duties, keep deliberations confidential and to behave at all times as a worthy and honest member of the judiciary." They may not under any circumstances be released from this oath.

For this reason, within the judicial body, which assigns positions that, although many and varied, all have a high ethical content, "career progression" cannot be a goal in itself. If the ambition and aspiration for professional development are legitimate, they are only conceivable by respecting the duties of the position of judiciary member.

Furthermore, these require particular vigilance by judiciary members, who before joining the body, have been able to carry out other professions or who, after joining, may continue to do so.

Members of the judiciary and their previous careers

The most varied previous professional activities may strengthen the diversity of the body of judiciary members and increase its familiarity with society's issues which courts have to deal with.

When members of the judiciary have been engaged in a previous professional activity, they shall take particular care to ensure that the relationships that they may have with people from their former profession cannot harm their impartiality or perceived impartiality.

This ethical requirement may go beyond the sole incompatibilities set out by statutory rules. It is therefore the responsibility of judiciary members to consider the risks of harm to their perceived impartiality. In this process, they shall notably take into account the size of the jurisdiction and the nature of the former activity carried out and provide the appointing authorities with all information that may allow the assessment of statutory or ethical incompatibilities.

Members of the judiciary and their careers in the judiciary

Recruitment to the justice service, in accordance with the duties of the position of judiciary member and concern for the proper running of the institution, is not exclusive from each judiciary member's aspiration for career progression providing them with fulfilling professional work.

Members of the judiciary are aware that their duration in a given position enables them to gain a better understanding of the position and avoid disruption to the department or court.

Subject to taking the individual situations of judiciary members into account, the interest of the department and proper management of the court assume that a position is assigned for a reasonable duration, both with regard to its brevity and excessive length.

It is particularly the case with duties in chambers, which require the familiarisation with and monitoring of cases within a short space of time.

The Presidents of Courts of Appeal or courts of first instance shall endeavour to ensure that the duration of their duties enables them to fully assume their roles.

If they are approaching retirement age, judiciary members shall also consider if there remains sufficient time to perform the position which they have applied for.

To allow for a thorough review by the appointing authorities, judiciary members shall provide information on their planned retirement date.

When a transfer of a judiciary member is announced or the end of their professional activity is approaching, this shall not exempt them from fulfilling their role with the same ethical requirements until their role comes to an end.

Professional conscience requires judiciary members to ensure that their abilities and expertise are appropriate for the duties they aspire to.

Just like the Presidents of Courts of Appeal or courts of first instance, judiciary members shall ensure that their administrative file is completely up-to-date and enables the appointing authority to fully assess their abilities.

To this end, members of the judiciary are recommended to take the utmost care in preparing the activity report required of them under Article 12-1 of the Statutory Order (Annex I) and to include all information that they deem useful concerning their past activities (literal description, statistics, prospects, etc.). It is their responsibility to ensure that they

take part in training, which is a professional obligation, and that this is in line with building a real career path.

Members of the judiciary who are seconded shall contribute to enhancing their skills, as well as promoting the image of the judiciary. They shall endeavour to ensure that the judiciary can ultimately benefit from the experience acquired outside of the courts. Furthermore, they shall ensure that they are not seconded or placed on leave of absence with authorities or institutional actors such as political or administrative authorities (e.g. prefectural administration) within the jurisdiction of the court that they are preparing to leave.

On returning from secondment, members of the judiciary shall ensure that no doubt can be cast on their impartiality due in particular to their possible professional and institutional situation and connections that they may have established.

In addition to the statutory rules that are imposed on everybody, judiciary members of whom certain family members are themselves judiciary members shall notably ensure through their geographic and functional postings that no doubt can be cast on their impartiality and independence.

Members of the judiciary may be exposed to an increased risk of their impartiality being questioned if they carry out the same function within the same jurisdiction for an excessively long period.

Geographic mobility provides protection against overly close relationships with prominent local people, in particular persons involved in the administration of justice, partner associations, the media and economic and social circles. Like functional mobility, it contributes to impartial professional conduct.

Limited geographic and functional mobility require judiciary members to demonstrate increased vigilance in order to guarantee their independence and impartiality.

Members of the judiciary are subject to a residency obligation. Although it is understandable that at a certain stage of their career and private life they may be granted dispensations, these may only be limited. Above all, they must guarantee that judiciary members are sufficiently present and involved in their court in order to be completely integrated in the working community, e.g. in order to support local projects and promote collegiality.

Members of the judiciary and their subsequent careers

At the end of their careers, members of the judiciary are not released from a certain number of ethical requirements pertaining to their position.

It is therefore noted that under Articles 9-1 and 9-1-1 of the order on the status of the judiciary, current and former judiciary members may not engage in the profession of lawyer, notary, court bailiff, judicial auctioneer, court clerk at the commercial court, court-appointed administrator or court-appointed liquidator or work for a member of these professions within the jurisdiction of a court at which they have performed their duties within the last five years.

The provisions of the previous paragraph do not apply to judiciary members at the Court of Cassation.

Current and former members of the judiciary may not be employed in the service of the overseas authorities of Saint-Barthélemy, Saint-Martin, French Polynesia, New Caledonia and Saint-Pierre and Miquelon or their public institutions when they have performed their duties in the territory of the authority concerned within the last two years.

Members of the judiciary working on a temporary basis

It is their responsibility to take particular care to avoid any confusion between performing their duties as a judiciary member and being engaged in another profession, current or past. For example, members of the judiciary working on a temporary basis who simultaneously work as a lawyer shall naturally be prohibited from hearing in any capacity whatsoever cases concerning litigants who may also be their clients. They are prohibited from allowing their current or former clients to benefit from their access to the courts or suggesting or letting them think that they may do so.

Fee-paid judiciary members shall remain subject to the same ethical obligations.

Members of the judiciary and local authorities

The involvement of the judiciary in drafting various public policies results in judiciary members developing relationships with local authorities, the significance of which depends on the duties that they perform within the court: elected representatives, members of the prefect, managers of regional or government authorities, representatives of various professions or economic sectors, etc.

These relationships are necessary for the proper integration of the judicial system within its institutional, economic and social environment. They enable members of the judiciary to assume responsibilities within organisations that are involved in drafting judicial policies, in particular those pertaining to crime prevention, access to justice, victim support or mediation. They are a means of acquiring in-depth knowledge of local environments and a better understanding of local issues of legal action.

Nevertheless, they require prudence and vigilance in order to avoid these relationships generating conflicts of interest and undermining the duties of independence and impartiality by which judiciary members are bound.

Necessary relationships

Although not all judiciary members intend to develop relationships with local actors, several legislative and regulatory provisions require some of them to contribute to the organisation of various public policies. For example, Article 39-1 of the Code of Criminal Procedure entrusts the Head of prosecutor office with the responsibility of organising and coordinating the crime prevention policy within his or her judicial section. Article 55 of the Law of 10 July 1991 on legal aid gives the President of the first instance court of the department's seat of government the presidency of the departmental board for access to justice, and the vice-presidency to the Head of prosecutor office.

Article 9 of Decree No. 2016-514 of 26 April 2016 on judicial organisation provides for the establishment of a court council within each first instance court and each court of appeal, notably made up of local government representatives, representatives of regional authorities and elected parliamentarians for the jurisdiction. According to the aforementioned decree, this court council is "a place for discussion and communication between the court and community". Article 8 of the same decree states that "the court plan prepared on the initiative of the Presidents of the courts, in consultation with all court staff, is fully or partly presented within the court council to the individuals, bodies and authorities with which the court has relationships".

A large number of regional authorities contribute, under agreements with the judicial system, to financing associations involved within the fields of access to justice, victim support or mediation. The Presidents of the courts like members of the judiciary delegated to policies within associations are in this respect the designated contacts of local elected

representatives and representatives of regional authorities for the purposes of determining the funding which the associations must receive with regard to the objectives set for them.

Similarly, the creation, construction or redevelopment of courts requires in-depth consultation with local actors, in particular elected representatives of the regional authorities concerned. The same applies for the establishment and organisation of legal advice centres [*maisons de justice et du droit*] or points to access justice [*points d'accès au droit*].

The Presidents of the courts or their representatives shall maintain relations with local actors with regard not only to their legal and regulatory obligations but also to the significant impact of certain public policies on the proper running of the judicial system.

Despite their many responsibilities, members of the judiciary shall contribute, as far as possible, to bodies consulting on and organising these policies, by fully playing their role in accordance with the prerogatives and responsibilities of their partners.

When a regional authority includes in full or part several jurisdictions of *Tribunaux de Grande Instance* or courts of appeal, or when administrative divisions do not tie in with those of the judicial landscape, it is the responsibility of the Presidents of the courts concerned to confer and organise themselves in order to ensure effective and coherent representation of the judiciary with local actors.

Necessary caution

The overriding need to prevent any harm to the duties of independence and impartiality that govern the running of the judicial system involves particular vigilance in the relationships that judiciary members are led to develop with local actors.

Particular vigilance is required in personal relationships with local elected representatives when they are liable to cast doubt on impartiality and independence in the minds of litigants or the public.

Such relationships may also make the protective role difficult that Presidents of the courts must assume when members of the judiciary are the subject of unjustified attacks by local actors.

In this respect, participation in a partner body should be prohibited when a close family member (spouse, ascendant, descendant, etc.) holds elected office or a position within a regional authority that is a member of this body.

In accordance with the provisions of Article R. 212-64 of the Code of Judicial Organisation, individual cases, concerning third parties and *a fortiori* a local representative, may not be the subject of any discussion as part of the consultative body.

The risk of seeing local actors address individual situations is further increased when the consultation concerns a small area such as a neighbourhood where individuals and families concerned by initiatives to prevent or stamp out crime are easily identifiable. It is the responsibility of the judiciary's representatives to ensure that at the time of these discussions, personal information from investigations carried out under the judiciary's authority are not disclosed to third parties (housing associations, national education, specialised prevention, etc.).

When a local actor is involved in a legal case, particularly when this local actor is implicated, judiciary members who are members of consultative bodies shall refrain from any conduct or comments that refer to such a case, notably in order not to undermine the presumption of innocence.

Such vigilance is not only intended to be exercised when members of the judiciary are in court but also once they have left it. It is thus, to say the least, inappropriate for fee-paid members of the judiciary, or those on leave of absence or secondment to assume responsibilities within regional authorities or bodies for which they have recently heard cases as part of their judicial duties.

The same shall apply on returning from secondment or a leave of absence, or when returning after having been contracted out [*mise à disposition*].

Members of the judiciary, lawyers and other persons involved in the administration of justice

Judges, prosecutors and a fortiori the Presidents of the courts are responsible for maintaining relationships with the Bar and other persons involved in the administration of justice which fully establish their concern for independence, impartiality, respect for and attention to others, dignity and fairness, restraint and discretion. All of these values are brought into play in an appropriate relationship between judiciary members and lawyers or any persons involved in the administration of justice.

Initial attention must be given to the personal relationships between judiciary members and persons involved in the administration of justice. Established before or during each other's professional activity, friendly or more intimate relations or those due to the status of litigant of judiciary members must not lead the latter to breach their duty of impartiality.

Even if members of the judiciary keep them at arm's length, objective impartiality requires them to continually take care in a professional capacity not to give litigants and court observers reason to think that they are breaching this duty.

In all circumstances and without breaching their other duties, members of the judiciary shall ensure that they respect the individual and the rights and prerogatives of persons involved in the administration of justice and treat them fairly.

Finally, outside of the hearing, members of the judiciary and specifically Presidents of the courts must maintain constructive dialogue with persons involved in the administration of justice in the very interest of the proper management of the court.

Personal relationships between members of the judiciary and persons involved in the administration of justice

The independence and impartiality of judiciary members shall lead them to be vigilant in their relationships with persons involved in the administration of justice which may raise doubts over their impartiality and independence in the minds of litigants or the public.

There may be close ties or friendship between judges, between judges and prosecutors or between judiciary members and lawyers. The duty of impartiality requires members of the judiciary to cut these ties in order to hear each argument of the cases brought before them without any preconceived idea. If the nature of the connection leads judiciary members to consider that their impartiality may be questioned, they shall withdraw.

Similarly, appointment to a court at which judiciary members have, among the persons involved in the administration of justice, acquaintances that are sometimes long-standing, shall not prevent the continuation of these relationships, but shall require vigilance and a clear distinction between friendly exchanges and the professional relationship.

If a judiciary member and lawyer are a couple, whether or not officially, this requires on their part the utmost respect of secrets by which each is bound and, more broadly, a separation between professional and private life which limits any discussion related to the specific work of the other and in particular the exchange of information related to cases being handled or the individuals and stakeholders that they concern. Members of the judiciary shall withdraw from all cases where the lawyer concerned or the lawyer's firm is involved. If this relationship is likely to impact the running of the service, they shall inform their President of the Court of Appeal or court of first instance.

Members of the judiciary who need in their private or professional life to consult a lawyer or ask a lawyer to defend their interests or those of their close family shall refrain from handling cases in which this lawyer is involved for the entire duration of the proceedings and their enforcement. In general, members of the judiciary must ensure to identify as soon as possible any close situation with a lawyer or their firm that requires them to withdraw from proceedings.

Professional relationships and impartiality

Judges and prosecutors shall ensure to treat all persons involved in the administration of justice on an equal footing in order to protect their court from any criticism concerning objective impartiality. They shall be careful for example, in professional relationships, and notably at the hearing (public hearing or in chambers), not to show unequal signs of closeness, friendliness, deference or respect with one party more than another. This should not lead to any lack of courtesy to anyone but equal treatment of all in a perfectly neutral manner.

Respect, attention and fairness with regard to persons involved in the administration of justice at the hearing

Judges, regardless of the area in which they are involved (civil, criminal) and especially the presiding judge of benches or sole judges shall not fail to show the respect and pay the attention due to those before which they perform their duties. It is the responsibility of members of the judiciary and lawyers to be courteous in their exchanges.

Judges and notably presiding judges of benches or sole judges shall ensure that each party, private party and public prosecutor fulfil their role, their entire role and nothing but their role with no loss of control or excessiveness.

The respect due to the involvement of the lawyer at the time of the hearing guarantees calm hearings and contributes to the quality of justice. Incidents occurring during the hearing shall be managed fairly and with respect for others.

Even if lawyers may have breached through their comments or behaviour their own ethical rules, such incidents may not be settled by increasing aggressiveness or judiciary members breaching their own duties. In addition, if it does not seem possible to immediately settle the incident to enable proceedings to resume calmly, the hearing should be suspended to allow for the President of the Bar to intervene.

Members of the judiciary may not state that it is pointless to plead certain points on the pretext of "established case law". Members of the judiciary shall decide on the case referred to them without allowing their opinions on the qualities and faults of the persons involved in the administration of justice to interfere in its handling, the hearing or their decision.

Professional relationships outside of the hearing

Members of the judiciary may on a personal level have clear preferences for respecting certain rules of form or spelling. A reminder of a preference, whatever it is, must be given considerately. The rules for drafting texts published in the Official Gazette of the French Republic may not under any circumstances serve as a basis to refuse consideration of a document or letter that does not observe the preference previously stated¹.

Members of the judiciary shall observe the professional activity of all persons involved in the administration of justice. They must take into account as far as possible the constraints of practising as a lawyer.

Members of the judiciary shall endeavour where possible to arrange the order in which the cases are brought up at a hearing so as not to prevent lawyers from performing their duties.

It is their responsibility to observe the professional activity of all persons involved in the administration of justice.

The Presidents of the courts shall promote at all times honest and constructive dialogue with professional partners of the court. In the interest of the justice department and its users, such dialogue must enable the various professions to identify in the consultation the most appropriate organisations, after discussing their respective constraints.

The relationships between Presidents of the courts and Presidents of the Bar, which are the springboard for this dialogue, are based on openness, mutual trust and honesty. They must not however breach the duty of restraint or discretion.

All of these recommendations shall clearly apply, by adapting them, to professional relationships established between judges or prosecutors and senior officers and police officers in the performance of their judicial duties.

ⁱ **Circular of 21 November 2017 on the rules of feminisation and drafting texts published in the Official Gazette of the French Republic. NOR: PRMX1732742C**