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**JUDICIAL ETHICS: REFLECTING ON THEIR INFLUENCE ON
JUDGES' PRIVATE LIFE**

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INTRODUCTION

While entering the judiciary we come to reflect on judicial ethics and their possible impact on a judge's private and social life. It is noticed in advance that this paper does not aim to set rules or provide judges with ethical advice. It rather aims to provide, if possible, with an overall presentation of the existing status of judicial ethics and figure out certain implications with private life according to relevant case-law. The first chapter (section I) briefly sets the outline of the protection of judges' private life: what the right to private life includes and do judges hold such a right? In the second chapter (section II) an approach of judicial ethics is made, further referring to propriety, dignity and integrity issues, in an attempt to practically define where these ethical principles may implicate with private life. Implications with judicial impartiality are presented in the third chapter (section III) and ECHR case-law in the fourth chapter (section IV), while making some final thoughts at last.

I. PROTECTION OF PRIVATE LIFE

Statutory provisions regarding protection of private or family life and self-development can be found within the Greek Constitution,¹ the European Convention on Human Rights (herein: the "Convention"),² the EU Charter of Fundamental Rights³ and other international legal documents.⁴ As the European Court of Human Rights (herein: the "ECHR") has noticed, "*the concept of "private life" is a broad term not susceptible to exhaustive definition*" (cases of *S. and Marper v. the United Kingdom*, *Couderc and Hachette Filippacchi Associés v. France*)^{5,6} covering, among others, multiple aspects of physical or social identity and personal sphere, such as gender identification, sexual orientation and sexual life (cases of *B. v. France*,⁷ *Mata Estevez v. Spain*,⁸ *Schalk and Kopf v. Austria*,⁹ *Aldeguer Tomàs v. Spain*,¹⁰ *Y.Y. v. Turkey*¹¹)¹², as well as, in certain cases, a zone of interaction of a person with others,

¹ Articles 5 para. 1 and 9 para. 1 of the Greek Constitution, available at www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/.

² Article 8 of the Convention, available at www.echr.coe.int/Documents/Convention_ENG.pdf.

³ Article 7 of the EU Charter, available at eur-lex.europa.eu.

⁴ Article 12 of the UN Universal Declaration of Human Rights, articles 1, 17 and 23 of the International Covenant on Civil and Political Rights, both available at www.ohchr.org.

⁵ Grand Chamber's judgement of 04.12.2008, applications nos. 30562/04 and 30566/04, §66

⁶ Grand Chamber's judgement of 10.11.2015, application no. 40454/07, §83.

⁷ Judgement of 25.03.1992, application no. 13343/87, §§53-55.

⁸ Decision of 10.05.2001, application no. 56501/00.

⁹ Judgement of 24.06.2010, application no. 30141/04, §94.

¹⁰ Judgement of 14.06.2016, application no. 35214/09, §75.

¹¹ Judgement of 10.03.2015, application no. 14793/08, §§56-60.

¹² See also judgements nos. 1337/2013 and 888/2008 of the Greek Council of State, §13 and §6 respectively, in which it was held that a person's private life (protected under the Greek Constitution) includes sexual life

even in a public context (case of P.J. and J.N. v. the United Kingdom).¹³ Further to this, private life may also cover, under circumstances, interaction with other people and communication within social media depending on the number of people who can or are expected to access and view the relevant data.¹⁴

Aspects of private life relating to sexual identity and sexual life are considered to be at the very heart of personal autonomy, leaving no place for discrimination of any kind upon them and further, not permitting, any external and undesirable intervention to this sphere, unless a voluntary reveal has taken place.¹⁵ Exemptions may arise in cases of public figures or people involved in the public sphere. However, even in these cases, interventions in such a sensitive sphere shall satisfy a serious public interest and shall be considered to contribute, upon in concreto examination, to the public debate. Otherwise, freedom of expression and freedom to be informed cannot overlap private life.¹⁶

Judges fall within the meaning of public figures and issues related to justice are considered to be of public interest.¹⁷ Nevertheless, as already held by ECHR in the *Özpinar v. Turkey* case,¹⁸ judges, just like any other person, hold the right to private life, including self-determination and personal development. They can freely determine their sexual orientation, select their partner and enjoy family life. Besides, diversity in the judiciary, including sexual diversity, is a goal to be achieved.¹⁹ And how about the way

¹³ Judgement of 25.09.2001, application no. 44787/98, §56.

¹⁴ European Court of Justice, judgement delivered on 06.11.2003, case Bodil Lindqvist, application no. C-101/01, §47. See also ECHR's judgements of 26.07.2007, *Peev v. Bulgaria*, application no.64209/01, §§37-40, and of 03.04.2007, *Copland v. the United Kingdom*, application no. 62617/00, §§41-42,

¹⁵ Judgement no. 867/1988 of the Greek Council of State (plenary session), judgements nos. 3545/2002 and 554/2003 of the same court, §10 and §17 respectively, as well as judgements nos. 1337/2013 and 888/2008, supra at 12.

¹⁶ Judgement no. 1337/2013, supra at 12. See also ECHR's judgement of 21.02.2017, *Rubio Dosamantes v. Spain*, application no. 20996/10, §32, judgement of 07.02.2012 (Grand Chamber), *Von Hannover v. Germany (No2)*, applications nos. 40660/08 and 60641/08, §§108-113.

¹⁷ ECHR's Judgement of 09.07.2013, *Di Giovanni v. Italy*, application no. 51160/06, §71. In this case an Italian judge had given to the press two interviews regarding the appointment procedure of new judges commenting one of her colleagues, member of the Supreme Council for the Judiciary, who allegedly intervened at the appointment procedure. Disciplinary procedures were brought against the (interviewed) judge for lack of respect, loyalty and discretion and she was given an official warning for that. After exhausting the internal remedies, the judge lodged an application to ECHR claiming, among others, that her rights under article 10 of the Convention had been violated. The Court held that issues relating to the function of the judiciary are of general interest. However, regarding the special status and role of the judiciary within society as well as the duty of magistrates for reserve, public confidence to the judiciary shall be preserved, meaning that it shall be protected from unreasonable and destructive attacks. On this grounds applying restrictions on freedom of speech (such as a disciplinary sanction of warning) may be justified. See also the same Court's judgement of 24.06.2004, *Von Hannover v. Germany (No1)*, application no. 59320/00, §§42, 72.

¹⁸ ECHR's judgement of 19.10.2010, application no. 20999/04, §48.

¹⁹ *L. J. Moran*, *Sexual Diversity in the Judiciary in England and Wales; Research on Barriers to Judicial Careers*, *Open Access Laws 2* (2013), p. 514-515.

judges exercise these rights and conduct in private and social life? Do they enjoy the same freedom as anyone else in their private sphere or are there special precautions to be taken and why? This is where judicial ethics and principles come into discussion, since they implicate to an extent with private life.

II. JUDICIAL ETHICS AND PRIVATE LIFE

(a) What judicial ethics stand for and in what way they implicate with private life?

As affirmed by the Judicial Group on Strengthening Judicial Integrity,²⁰ the Consultative Council of European Judges (herein: CCJE)²¹ and the European Network of Councils for the Judiciary (herein: ENCJ),²² judicial ethics are basically ethical principles governing the judges' conduct, indicating a sort of self-commitment to devoted, responsible, independent and impartial fulfilment of judicial duties; a sort of ethical self-restraint, in order to facilitate and achieve public confidence in the judiciary.²³ This need for strengthening public confidence derives from a broader need of our societies "*which are demanding more transparency in the functioning of the public bodies*",²⁴ the judiciary included.

The *Bangalore principles of judicial conduct*²⁵ could be characterized as the Magna Charta of judicial ethics on the global stage. They constitute the latest and probably most important international framework for judicial ethics. The United Nations Office on Drugs and Crime published in September 2007 a commentary on these principles that offers from a comparative perspective a lot of information concerning each of the adopted principles.²⁶

Apart from international and supranational legal documents, judicial ethics are under national debate long ago as well. Many U.S. States, for example, have adopted codes of judicial conduct since the 19th century. The first code of legal ethics was elaborated and adopted by the Alabama State Bar Association in 1887. Between 1887 and 1906 many States followed, like Georgia, Virginia, Michigan and others. The

²⁰ See The Bangalore Principles of Judicial Conduct, adopted in 2002, available at: www.unodc.org

²¹ See Opinion No 3 of the CCJE to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, adopted in 2002, available at: http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp

²² ENCJ Working Group, Judicial Ethics Report 2009-2010, available at: www.encj.eu/images/stories/pdf/ethics/judicialethicsdeontologiefinal.pdf

²³ See also *K. Menoudakos*, former President of the Greek Council of State, "Deontology and the right to criticism", article published on 01.03.2016 at the daily Greek journal *Kathimerini*, available at: www.kathimerini.gr/851465/opinion/epikairothta/politikh/deontologia-kai-kritikh

²⁴ See in the ENCJ Working Group's Judicial Ethics Report 2009-2010, *ibid*, Introduction, p. 1.

²⁵ *Supra* at 20.

²⁶ Commentary available at: www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf.

American Bar Association adopted such a canon in 1908. Today such documents can be found for nearly every State of the U.S.A. However, one can observe that what is actually regulated under the aforementioned U.S. canons is judicial conduct and no reference to judicial ethics is made leaving place for conclusions such as that “*professional self-regulation*” foreclosed any efforts by the states in the U.S.”²⁷

On the other hand, in 1971 the Canadian parliament established the *Canadian Judicial Council*. This institution’s competence extends to dealing with complaints made by the public or the Attorney General regarding the conduct of federal judges. The powers of the Council are laid down in the Judges Act, while its principle task focuses on dealing with questions of judicial conduct. The *Ethical principles for Judges*,²⁸ a text adopted by the aforementioned Council in 1998, which is also enforceable due to the powers conferred to the Judicial Council, is one of the first ethical frames regarding the judiciary within the global debate. This text sets out five key principles in the Canadian judicial system: Independence, Integrity, Diligence, Equality and Impartiality.

On the other hand, in European countries judicial ethics usually do not bear the typical normative form of a law or a regulation (see for example France,²⁹ United Kingdom,³⁰ Belgium³¹ and Norway³²). Instead, they are found in guidelines drafted by bodies of the judiciary.³³ Special reference shall be made to Germany which has no code of conduct for the judiciary that is elaborated by judges. However, judges’ conduct is regulated within certain laws like the *Deutsches Richtergesetz*. These rules are less detailed than the American codes of conduct mentioned in the paragraph right above. They vaguely provide for judges to preserve their independence (§39) and include some rules concerning incompatibilities with judicial duties. Apart from the *Deutsches Richtergesetz* no “official” code of conduct or anything similar exists. The German Association of Judges (*Deutscher Richterbund*) established a working group (“*Netzwerk Richterliche Ethik*”)³⁴ on judicial ethics. This working group did not aim to adopt a binding

²⁷ See *J. P. Terhechte*, *Judicial Ethics for a Global Judiciary – How Judicial Networks Create their own Codes of Conduct*, *German Law Journal*, Vol. 10 (2009), issue No. 04, p. 506.

²⁸ Available at: https://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf.

²⁹ A Compendium of the Judiciary’s Ethical Obligations was set in 2010 by the Supreme Council of the Judiciary.

³⁰ A guide to Judicial Conduct was published by the Judicial HR Committee of the Judges’ Council in March 2013 and revised in July 2016.

³¹ A guide for Magistrates including Principles, Values and Qualities was published by the High Council of Justice and the Consultative Judicial Council in June 2012.

³² A set of Ethical Principles for Norwegian Judges was published by the Norwegian Association of Judges in October 2010.

³³ Drafting of judicial ethics’ principles by the judges themselves is recommended by the CCJE (see in the Magna Carta of Judges, adopted in 17.11.2010, §18) as a means of independence and self-regulation towards the other two branches of state powers.

³⁴ See at: www.drb.de/positionen/richterliche-ethik.html

canon or code of conduct. Instead it launched a working paper (“*Thesen zur Diskussion richterlicher und staatsanwaltlicher Berufsethik im Deutschen Richterbund*”),³⁵ starting a first discussion about judicial ethics. Greece does not have a judicial ethics’ guideline or a general set of principles elaborated by judges yet.

Adoption of guidelines and documents setting general principles of conduct seem to satisfy the aforementioned need of enforcing public confidence in the judiciary more effectively than adopting typical legal texts, since guidelines are more flexible to revision while societal needs evolve. However, CCJE has stressed out³⁶ that such guidelines cannot be considered to be enough when aiming to preserve independence and impartiality of the judiciary. Guidelines should be combined and co-exist with statutory rules. Furthermore, it has been stressed out³⁷ that codes of professional conduct may “*give the impression that they contain all the rules and that anything not prohibited must be admissible*”, while others criticize excessive public scrutiny of judicial conduct³⁸ on the grounds that it may result to unnecessary recusals and timid judges who seek advisory opinions all the time. Though, regardless the form under which ethics and deontology may finally appear, one cannot doubt that the existence of principles for the judicial conduct strengthens judicial institutions’ credibility and prestige,³⁹ enhances public confidence in the judiciary within a democratic society and fosters self-restraint from judges themselves, especially when such principles have actually been part of the judicial training.

Judicial ethics do not only apply when fulfilling judicial duties. They also cover conduct in private life and extra-judicial activities. Judges, apart from respecting and conforming to the law like every other person, are expected to behave with integrity, propriety, reserve and discretion, both on and off-the-bench.⁴⁰ As regards the principle of integrity, it further refers to probity, dignity and honour within a judge’s private and social life. It is not easy to precise the exact content of the aforementioned principles, nor such an exhaustive definition exists,⁴¹ despite relevant catalogues of examples that may exist. This is

³⁵ Available at: www.drb.de/fileadmin/docs/120121_DRB-Diskussionspapier_Richterethik_in_Deutschland.pdf

³⁶ See Opinion No 3, supra at 21, §45.

³⁷ Supra at 21, §46.

³⁸ See in *R. J. Miner*, *Judicial Ethics in the Twenty-First Century: Tracing the Trends*, Hofstra Law Review, Vol. 32, Iss. 4 (2004), p. 1109.

³⁹ See in *Ch. Kosmidis*, judge at Greek Supreme Court, “Judicial Deontology, freedom of speech and protection of the right to personality”, presentation made on 19.03.2016, text available at: dikastis.blogspot.gr

⁴⁰ To this regards the ECHR, following its previous case-law in *Vogt v. Germany* case (judgement of 26.09.1995, Grand Chamber, application no. 17851/91) and *Kurtulmuş v. Turkey* case (decision of 24.01.2006, application no. 65500/01), held in the aforementioned Özpınar case (supra at 18, §71) that magistrates have a duty for reserve in their private life also.

⁴¹ See The Bangalore Principles, supra at 20, CJE Opinion No 3 (2002), supra at 21, §29, ENCJ Judicial Ethics Report 2009-2010, supra at 22, French Compendium of the Judiciary’s Ethical Obligations, supra at 29, the Guide to Judicial Conduct for the Judiciary of England and Wales, supra at 30, the Belgian Guide for Magistrates, supra

mainly due to the fact that these principles actually reflect moral standards that judges are expected to follow. Moral standards vary from time to time and place to place. However, the implication of ethics in judges' private life does not mean that judges upon their appointment disclaim every right to private life and personal development in favor of stiff moralism. Such an approach would be at the wrong direction. Firstly, because applying for the judiciary relies on free will and acknowledgement of the function and role of the judiciary within society, which further implies more obligations and self-commitment so as to satisfy the public interest of confidence in justice. Ethics do not aim to undermine, per se, a judge's private life, imposing mere moral restrictions or resulting in disciplinary procedures. As already stated above, it is a means of self-regulation, the adoption of a voluntary animus, which enhances public confidence at the same time. Secondly, because none actually expects that judges shall refrain from private life or be socially isolated or abstain from social activities. That would have the opposite results on the judicial function, "*since the judicial system can only function properly if judges are in touch with reality*".⁴² What should really be at stake is to avoid creating conflicts of interest when socializing as this would undermine the fulfilment of their duties. Thirdly, because judges, like anyone else, still hold a private sphere of personal development, where they can freely conduct their private lives and where no external interventions are permitted. Difficulties arise when it comes to define this sphere in cases that personal choices may reflect on a public context. What is recommended in such cases is to apply the reasonable, fair minded and informed person test, that meaning to test "*how a particular conduct would be perceived by reasonable, fair minded and informed members of the community, and whether that perception is likely to lessen respect for the judge or the judiciary as a whole*".⁴³

(b) Judicial ethics and disciplinary procedures: an attempt to practically approach the concept of "integrity", "dignity" and "propriety"

Disciplinary liability of magistrates and disciplinary procedures have to be distinguished from judicial ethics, since it is not the breach of ethics' principles that result to disciplinary procedures but the infringement of relevant statutory provisions which are set to protect the judicial function from "*serious and flagrant*" misconduct.⁴⁴ Ethics actually aim to prevent misconduct and risks during the judicial

at 31, as well as the Ethical Principles for Judges drafted by the Canadian Judicial Council, available at: www.cjc-ccm.gc.ca

⁴² See CCJE Opinion No 3 (2002), supra at 21, §27.

⁴³ See in the Commentary on The Bangalore Principles of Judicial Conduct, supra at 26, §102

⁴⁴ CCJE Opinion no. 3 (2002), supra at 21, §60.

function, while disciplinary rules aim to suppress and punish a serious misconduct that has already taken place. However, those two different types of provisions meet where the law provides that “impropriety” and “lack of dignity” may result to a disciplinary sanction. Greek organic law for the organization of the judiciary provides that a judge’s or public prosecutor’s discreditable or improper conduct in or off-duty constitutes a disciplinary offence.⁴⁵ Relevant provisions can be found in French organic law for the magistrates’ status.⁴⁶

Propriety, in particular, is perhaps considered to be one of the key ethical principles within the whole Bangalore framework. Propriety shall guide all – official and private conduct – of a judge, meaning that in the name of propriety judges shall accept certain personal restrictions and undertake relevant obligations on all levels (freedom of expression, avoid family influence, not practice law), they have to think always carefully about their personal relations with individual members of the legal profession, shall withdraw from proceedings in which members of their family are involved as litigants or in any other capacity, or shall refuse gifts and other appropriate benefits.⁴⁷ As set out in the Commentary on the Bangalore Principles: *“What matters more is not what a judge does or does not do, but what others think the judge has done or might do”*.⁴⁸ *“Since the public expects a high standard of conduct on the part of a judge, he or she must, when in doubt about attending an event or receiving a gift, however small, ask the question, ‘How might this look in the eyes of the public?’”*⁴⁹ This approach in a way resembles to the “theory of appearances” developed under ECHR case-law as regards impartiality (see below under IV part). The Bangalore Principles offer a very detailed catalogue on applied circumstances of propriety, so does the commentary to the applications and perhaps even more so. The commentary, for example, deals extensively with questions of an “exemplary life”, “visits to public venues as bars”, engagement in gambling or the visit of “clubs and other social facilities”.

Apart from these examples included in the Commentary, we will make a short effort to practically approach ethics and separate them from disciplinary offences regarding “dignity” and “integrity” in several aspects of private life through relevant disciplinary case-law, indicating where ethics are considered to be buckled and flagrant misconduct is established.

⁴⁵ Law no. 1756/1988, article 91, Official Gazette issue A, no. 35 published on 25.02.1988.

⁴⁶ Ordonnance no. 58-1270/22.12.1958, article 43.

⁴⁷ See *J. P. Terhechte*, *Judicial Ethics for a Global Judiciary – How Judicial Networks Create their own Codes of Conduct*, supra at 27, p. 511

⁴⁸ See in the Commentary on The Bangalore Principles of Judicial Conduct, supra at 26, §111.

⁴⁹ See in the Commentary on The Bangalore Principles of Judicial Conduct, supra at 26, §111, where it is further stated that *“For example, a judge must ordinarily avoid being transported by police officers or lawyers and, when using public transport, must avoid sitting next to a litigant or witness”* (§112).

The French Supreme Council for the Judiciary⁵⁰ has respectively found that regular gambling, especially when appointed in a small town,⁵¹ low credibility and non-payment of debts,^{52 53} even if they have been created prior to judicial appointment, show lack of probity which stems from integrity. Besides, a lack of probity is established when a judge adopts humiliating and disrespectful attitude towards her neighbours and provokes serious nuisances to them,⁵⁴ while driving with excess alcohol in a public place, which may result to the judge's conviction, shows lack of dignity and is considered to be disrespectful for the judiciary.⁵⁵ Further to these, a judge or a public prosecutor taking advantage of his position in order to establish an intimate relationship with a litigant, without withdrawing from the case in front of him,⁵⁶⁵⁷

⁵⁰ Opinions and decisions available at: <http://www.conseil-superieur-magistrature.fr/missions/discipline>

⁵¹ Decision no. S223/21.01.2015: Disciplinary procedures were brought against Judge Mr. X (personal data is omitted from the relevant website due to privacy policy) regarding, among others, gambling in a regular basis and constantly borrowing money from his neighbours, although living in a small town. His attitude was found to be discreditable for the judiciary and a disciplinary sanction was imposed on him.

⁵² Opinion no. P078/24.06.2014 of the French Supreme Council for the Judiciary: Disciplinary procedures were brought against Mrs. X, a public prosecutor, for not fulfilling her contractual obligations, which she had undertaken while exercising her prior profession (attorney-at-law), and for failing to pay her debts to her creditors, who brought judicial procedures against her. Meanwhile, disciplinary procedures were also brought against her from the competent Bar related to the aforementioned actions. The Supreme Council for the Judiciary found this conduct to be negligent, showing lack of probity, and opined that Mrs. X's appointment should be revoked.

⁵³ Apart from the French Supreme Council's decisions, see also Statements nos. 15/25.02.2016, 31/29.07.2016, 35/198.08.2016 and 04/20.02.2017 from the Judicial Conduct Investigation Office of England and Wales, available at the following website: judicialconduct.judiciary.gov.uk/

⁵⁴ Decision no. S188/25.11.2010 of the French Supreme Council for the Judiciary: Disciplinary procedures were brought against Judge Mr. X. One of the offences related to nuisances committed to his neighbours, like trespassing and throwing litter to their gardens (including porn photos, nails, broken glass etc.). Once he was found by police officers in his neighbours' garden at 2.45 a.m. throwing porn photos. After this incident, several articles were published at the local press. The Council found that this conduct shows lack of dignity and delicacy and is dishonourable for the judiciary, thus the judge was sanctioned (dismissed from office).

⁵⁵ Statement no. 28/11.09.2015 from the Judicial Conduct Investigation Office of England and Wales: A judge was removed from the judiciary because he was convicted of driving with excess alcohol in a public place. The JCI Office noticed that in doing so the judge "*failed to comply with the magistrate's Declaration and Undertaking to be circumspect in his conduct and maintain the dignity, standing and good reputation of the magistracy at all times in his public, working and private life*".

⁵⁶ Decision no. S088/21.12.1995 of the French Supreme Council for the Judiciary: Judge Mr. X, repeatedly used the phone number of a female litigant, pretending to be an attorney-at-law so as to achieve an appointment with her. When meeting her, he didn't reveal his actual identity. The Council noticed that this conduct showed lack of dignity and was harmful for the judiciary's prestige, so it was decided to impose a disciplinary sanction to the aforementioned judge (he was displaced).

⁵⁷ Opinion no. P060/21.11.2008 of the French Supreme Council for the Judiciary: Mr. X, public prosecutor, took advantage of his position while handling a case, and initiated a mediation procedure between the two parties in order to meet one of them, Mrs. Y. Following the first mediation session, where only Mrs. Y was invited and appeared, Mr. X invited her for a second session after which he asked her to go out with him. An intimate relationship was established between them, though Mr. X didn't withdraw from the relevant case. The Council

or a judge having sex in his office⁵⁸ or a judge uploading erotic photos of himself on his web-page, which anyone could access and view,⁵⁹ have been found to lack the necessary dignity and reserve.

In all the above situations, what one can observe is that the relevant misconduct has not taken place at the absolute private sphere of the judge involved, but included a “public” aspect, meaning the misconduct was developed in a way that third parties could become aware or actually became aware of it happening. This perception of the misconduct by third parties, who could therefore reasonably doubt for the integrity, dignity or propriety of the judge involved, is that could undermine the authority of the judiciary.

III. JUDICIAL IMPARTIALITY AND PRIVATE LIFE

Impartiality is not just a principle to be found in judicial ethics’ guidelines. Among with independence, it is the very essence of a fair trial in a democratic society and a state respecting the rule of law.⁶⁰ When sitting on the bench, judges shall be free of any personal prejudice or bias given the case in front of them (subjective aspect).⁶¹ Judgements are to be delivered with neutrality and detached from any

noticed that his conduct showed lack of dignity and reserve, so opined that he shall be punished with a disciplinary sanction.

⁵⁸ Decision no. S160/06.12.2007 of the French Supreme Council for the Judiciary: Disciplinary procedures were brought against Judge Mr. X for having sexual relationships with litigants or women related to litigants. Mr. X admitted having twice sex in his office. The first woman was an old colleague of his wife, who addressed him in order to get legal advice on a pending civil case against her ex-employer. The second one was the mother of a person put under detention, who visited Mr. X, in his capacity as a judge and while he was replacing his colleague in charge of the relevant case, asking for a permission to see her son. The Council noticed that Mr. X’s conduct seriously undermined his objective impartiality, showed lack of dignity and was disreputable not only for him but for the judiciary as well. A disciplinary sanction was imposed.

⁵⁹ Decision no. S215/25.09.2014 of the French Supreme Council for the Judiciary: Disciplinary procedures were brought against Judge Mr. X. One of the offences related to uploading erotic photos of himself on his webpage on C site. During the disciplinary procedure it was established that anyone could have access and view these photos as Mr. X uploaded them “in public”. Mr. X claimed that he used to upload several artistic photos in an album titled “erotic” as a means of interaction with other people on Internet, but didn’t deny the fact that he actually uploaded such photos of himself. The Council noticed that his conduct showed lack of dignity and delicacy and was incompatible with his position as a member of the judiciary. Furthermore, this attitude had a negative impact on the authority of the judiciary, so he was dismissed from office.

⁶⁰ The Bangalore Principles, *supra* at 20, preamble. See also ECHR Court’s judgement of 15.12.2005 (Grand Chamber), *Kyprianou v. Cyprus*, application no. 73797/01, §118.

⁶¹ ECHR’s judgements of 15.10.2009 (Grand Chamber), *Micallef v. Malta*, application no. 17056/06, §93, 15.12.2005 (Grand Chamber), *Kyprianou v. Cyprus*, *supra* at 45, 28.11.2002, *Lavents v. Latvia*, application no. 58442/00, §117.

sentiment in favor or against any of the litigants. To this regards, attention shall be paid to the personal conviction and behaviour of a judge in a particular case.⁶² A judge's lack of bias is presumed, unless otherwise proved.⁶³ Further to this, sufficient guarantees shall exist to exclude any legitimate doubt in respect of the court's impartiality, meaning that it should always be examined whether in a given case there are ascertainable facts that could objectively raise doubt on the judge's impartiality (objective aspect).⁶⁴

Judicial ethics require that a judge adopts a conduct both on and off-the-bench which does not jeopardize his impartiality and minimizes the possibilities for him to be recused.⁶⁵ Apart from the ethical obligation of a judge to recuse himself in certain cases, recusal is usually also prescribed by law, including cases where the judge's bias is in a way presumed by the national legislator due to a very close family relationship or other close connection to the case in front of him.⁶⁶ This shall not be regarded as a burden to family or social or private life in general since justice and fair trial is relying on confidence and objectivity and the appearances that a reasonable observer perceives shall ascertain that (theory of appearances). On these grounds the French Supreme Council for the Judiciary has found that sexual relationship with litigants or people related to litigants could cast doubt on the judge's objective impartiality⁶⁷ and moreover that a public prosecutor's social relationship to a person further related to a litigant could cause the same doubts.⁶⁸ In addition, on the same grounds the advisory council of

⁶² ECHR's judgements of 21.11.2000, *Wettstein v. Switzerland*, application no. 33958/96, §42, 07.08.1996, *Ferrantelli and Santangelo v. Italy*, application no. 19874/92, §56.

⁶³ ECHR's judgement of 15.12.2005 (Grand Chamber), *Kyprianou v. Cyprus*, supra at 45, §119.

⁶⁴ ECHR's judgement of 15.12.2005 (Grand Chamber), *Kyprianou v. Cyprus*, supra at 45, 15.10.2009 (Grand Chamber), *Micallef v. Malta*, application no. 17056/06, supra at 46, §93, 96. See also the same Court's judgement of 04.04.2000, *Academy Trading Ltd and others v. Greece*, application no. 30342/96, §43, where it was further held (§§44-46) that, given the facts of the particular case, neither the delay in deciding that the case had to be reheard, the intervention in the proceedings of the former President of the Fourth Chamber of the Greek Supreme Court and the change of rapporteur at the last hearing of the case nor the fact that the daughters of two judges were working for a Greek businessman who was allegedly a friend of the one litigant's head were enough to establish lack of (objective) impartiality of the judges involved. The applicants didn't provide concrete and enough evidence to suggest a prejudice by the Supreme Court's judges.

⁶⁵ The Bangalore Principles, supra at 20, value 2, ENCJ Judicial Ethics Report 2009-2010, supra at 22, p. 4-5.

⁶⁶ Greek Code regulating the Procedure before Administrative Courts provides that a judge shall be recused (among other reasons) from any case where his spouse or fiancé or relative up to a third-degree consanguinity or affinity or a person related to him by adoption is a litigant (article 14 para. 3) as well as from any case this may be necessary for reasons of propriety (article 15). Relevant statutory provisions can be found in the Greek Code regulating the Procedure before Civil Courts (article 52) as well as in the Code regulating the Procedure before Criminal Courts (article 14).

⁶⁷ Decision no. S160/06.12.2007, supra at 58.

⁶⁸ Opinion no. P019/07.10.1993 of the French Supreme Council for the Judiciary: Discipline procedures were brought against a public prosecutor, Mr. X, who was closely related to Mr. Y, concierge of the court where Mr. X

deontology (collège de deontologie) of the French Council of State opined in favor of an administrative judge's practice to withdraw from every case where one of the litigants was a Social Security Institution competent for the reimbursement of healthcare expenditures due to the professional position of the judge's spouse (she was placed as chief of the legal remedies department of the aforementioned institution).⁶⁹

Furthermore, in 1957, the German Federal Supreme Court of Justice found that,⁷⁰ the fact that a party of a divorce pending action, was judge in that court, does not mean that the appointed judge for that case was biased. This complaint would be justified, if the appointed judge had a very close relationship - professional or private- with the party, beyond mere collegiality. According to a similar decision of the Berlin-Brandenburg Administrative Court:⁷¹ Professional contact between the judge and the lawyer of a person involved in the proceedings does not, in principle, constitute any bias by the judge. Exception: a close and personal bond. In particular, if the judge cooperates with the lawyer of a prosecutor in a disciplinary tribunal, this alone does not justify the judge's bias. This would require a close and personal bond between the two.

The question that arises is: How close should the relationship be, in order to affect the impartiality of the judge? That question concerned lately the Higher Regional Court of Hamm. The case was about a judge that came from the same little village, as the defendant, where they normally were on familiar terms with each other.⁷² On the bench, the judge did not address the defendant with his first name. According

was appointed. Due to this close relationship, Mr. X showed unreasonable tolerance to Mr. Y's involvement in the prosecution's affairs. It was established that Mr. Y had free access to the files which were classified in the prosecution's office and further, that he assisted Mr. X while the later interviewed litigants upon recommendation of Mr. Y. In addition, Mr. X was often accompanied by Mr. Y right outside the Court House, whether under official circumstances or on private meetings with friends or people related to the concierge who were having pending legal affairs. Despite the fact that it was widely known that Mr. Y was impecunious and that several seizures had been imposed on him, Mr. X accepted to accompany Mr. Y, twice, at the official premises of a car distributor in town, so that Mr. Y could choose and buy "the car of his dreams". The cost of that car was very high, though Mr. Y bought it thanks to Mr. Z, who lent him the money expecting in return Mr. Y's influence on the prosecutor, since Mr. Z's family had pending cases before the courts in town and they believed that Mr. Y could have an actual impact on Mr. X. Besides to this, before granting this loan, the prosecutor had filed a pending case in which one of Mr. Z's sons was involved without prior notice to the competent substitute prosecutor of the case. He further filed a pending case against Mr. Z and later on, when another son of Mr. Z was charged and invited to appear at the prosecution's office, Mr. X waited for him, accompanied with Mr. Y, right outside the Court House, where the defendant appeared not to be handcuffed upon Mr. X's request. The Council noticed that Mr. X's attitude had seriously cast doubt on his impartiality.

⁶⁹ Opinion no. 2013-7 delivered on 16.09.2013.

⁷⁰ BGH, 04.07.1957 - IV ARZ 5/57

⁷¹ Oberverwaltungsgericht Berlin-Brandenburg, Beschluss vom 05.03.2014- OVG 81 D 2.11 -

⁷² In German: "duzen"= to address someone as "du"/ to be on first name terms with each other.

to the Court, an acquaintance or a simple friendly relationship, does not demonstrate bias of the judge. The behavior of the judge does not implicate a very close friendship with each other.⁷³

On the contrary, a judge cannot avoid the apprehension of bias, when his wife works as a lawyer in the law firm, which represents the opponent.⁷⁴ In that case, the wife of the judge did not represent personally the client and she was working only part-time at the law firm. According to the Court, the special professional proximity of the wife of the judge to the attorney of the opponent, gave rise to righteous concern of the other party, that she may influence the judge in favor of the opponent.

If the judge is married to the prosecuting attorney in charge, this may give rise to doubts about the impartiality of the judge.⁷⁵ The court's reasoning was, that through the mutual trust and the mutual appreciation within a marriage the decision of the judge can be influenced. Apprehension of bias may also be raised on grounds of a non-marital partnership. The Administrative Court of Bremen has decided that the concealment of a non-marital partnership to the judge of first instance creates doubts about the impartiality of the judge of appeal.⁷⁶ If a judge is required to rule on an appeal against a judgment and he conceals the fact that he has a non-marital partnership to the judge who decided the case at first instance, he may be rejected on grounds of bias. The Higher Regional Court of Jena in a similar case, decided that the fact that the presiding judge is married to a judge of the same Chamber, under different surnames, who is a member of the same composition of the Court, must be notified to the parties to the proceedings.⁷⁷ This may indicate that the judges concerned are no longer able to provide the internal independence and professional distance of their own personal circumstances (or those of the spouse), which are indispensable for decision-making in a court.

Moreover, according to the Federal Supreme Court of Justice, if a judge uses a mobile phone privately (for family matters) during a hearing of a witness within a criminal proceedings, this justifies the concern of the bias within the meaning of § 24 (1) of the Code of Criminal Procedure.⁷⁸ It is to be feared that the judge has already defined a particular result because of the lack of interest in the main hearing.

All the above mentioned case-law indicates possible implications of a judge's private or social life with his objective impartiality and the appearances given to a third reasonable observer. What seems to

⁷³ OLG Hamm (Beschluss v. 15.5.2012, I-1 W 20/12)

⁷⁴ BGH (Beschluss v. 15.3.2012, V ZB 102/11).

⁷⁵ Amtsgericht Kehl, Beschluss vom 15.04.2014
- 5 OWi 304 Js 2546/14 -.

⁷⁶ Oberverwaltungsgericht Bremen, Beschluss vom 12.05.2015
- 2 B 40/15 -

⁷⁷ OLG Jena, Beschl. v. 15.08.2016 - 1 Ws 305/16

⁷⁸ Bundesgerichtshof, Urteil vom 17.06.2015 - 2 StR 228/14 -

cause further delicate and perplexed implications in the field of subjective impartiality is the adoption of a certain personal stance or lifestyle within private life or the exercise of extra-judicial activities of any type, which may reflect on the judge's exercise of judicial duties. For example, a judge participating in an extra-judicial association involving public activities for the promotion of a very specific goal may give ground for arguing the actual absence of bias or prejudice when a relevant case comes to adjudicate. Beyond that, recently in Kentucky a judge refused to hear same-sex adoption cases claiming that this was a matter of conscience,⁷⁹ while another judge in United Kingdom declined to deliver judgement on a case where the same issue was at stake and was therefore issued with a formal warning.⁸⁰ It is highly questionable how compatible this attitude may be with judicial ethics since it may imply an open prejudice not only for a single case but for a bunch of cases that could be brought before the judge.

IV. APPROACH VIA ECHR CASE-LAW

This brief chapter of the paper presents case-law findings, based on ECHR jurisprudence in particular, which in our point of view could serve to draw analogous conclusions on existing or hypothetical issues relating to judicial ethics. Specifically, the cases which gave rise to the below presented judgements of the ECHR may not always be directly related to the judiciary and judicial ethics, but, due to the generality and the objectivity of the jurisprudential rules which were formed by the aforementioned Court, it can be supported that these rules could also be applied in judicial ethics' matters.

1. Buscemi v. Italy (16-09-1999) – Discretion required by the judge

In this case, the ECHR stressed that judicial authorities are required to exercise maximum discretion with regard to cases they deal with, in order to preserve their image as impartial judges. That discretion should dissuade them from making use of the press, even when provoked.⁸¹ According to the Court, it is the higher demands of justice and the elevated nature of judicial office which impose that duty.⁸² Indeed, according to our point of view, this obligation continues to apply, even in the case where a judge is criticized or challenged on sensitive aspects of his or her private life, even regarding his or her erotic life. It could be argued that even if a judge is wrongly criticized for his or her erotic life, ethics require not making extensive press statements by notifying in particular aspects of his or her private life, especially his or her erotic life, which could objectively harm the prestige of justice. In fact, in such a

⁷⁹ *B. Griggs*, A judge refuses to hear same-sex adoption cases “as a matter of conscience”, published on 01.05.2017, available at: edition.cnn.com/2017/05/01/health/kentucky-judge-same-sex-case-trnd/

⁸⁰ Statement from the Judicial Conduct Investigation Office in England and Wales, no. 01/26.01.2017.

⁸¹ ECHR's Judgement of 16-09-1999, *Buscemi v. Italy*, application no. 29569/95 § 67.

⁸² See also ECHR's Judgement of 30-10-2012, *Karpetas v. Greece*, application no. 6086/10, §68 in fine.

case, the judge may be considered to be in breach of the judicial ethics.

2. K.A. and A.D. v. Belgium (17-02-2005) – Judge involved in sadomasochistic practices

In that case, at the material time, K.A., who was a judge, and A.D., a doctor, took part in sadomasochistic practices with the wife of K.A. Between 1990 and 1996 they frequented at a sadomasochism club in Belgium, whose owners became the subject of a judicial investigation that was extended to the applicants. On 30 September 1997, on the basis of Articles 398 and 380 *bis* of the national Criminal Code, the Antwerp Court of Appeal found the applicants guilty of assault occasioning actual bodily harm and also found K.A. guilty of incitement to immorality or to prostitution. With regard to the offence of assault occasioning actual bodily harm, the Court of Appeal observed that the applicants had engaged in extremely violent practices on premises which they had specially hired and equipped for that purpose and that such practices were, moreover, forbidden by the rules of the sadomasochism clubs which K.A. and his wife had previously frequented. Besides to the extreme cruelty of those practices, it appeared from video recordings, which were seized during the investigation, that the defendants had, in particular, ignored several pleas by their victim to stop their activities. The Court of Appeal considered that the practices in question were so serious, shocking, violent and cruel as to undermine human dignity, and the fact that the defendants continued to maintain that their activities had merely amounted to a kind of sexual experience in the context of sadomasochistic rituals played out behind closed doors between consenting adults did not alter that conclusion. The Court of Appeal also held that K.A. was guilty of incitement to immorality and prostitution, The applicants appealed to the Court of Cassation, which dismissed their appeal on 6 January 1998. Observing that K.A. had seriously undermined the dignity of his office as a judge and that he was accordingly unfit to hold such office, the Court of Cassation dismissed him on 25 June 1998. He subsequently lost his entitlement to a public-sector retirement pension.

The applicants further complained before the ECHR that, under Article 8 of the Convention, their criminal conviction had infringed their right to respect for their private life. In the ECHR's view, two factors had to be taken into consideration. Firstly, the applicants did not appear to have complied with the rules normally observed for such practices: not only had they consumed large quantities of alcohol at these sessions, so that they had lost all control of the situation, but they had also ignored the victim's cries of "mercy" and "stop", the words which those taking part had apparently agreed would be used as a signal for the activities to cease. Secondly, the applicants had hired private premises to pursue their activities as they knew that such practices were forbidden by the rules in force at the sadomasochism clubs they had previously frequented at. The owners or managers of those clubs had been and were still particularly well placed, on account of their activities, to assess the various risks that sadomasochistic practices could entail. In those circumstances, the applicants could not have been unaware that they were at risk of being

prosecuted for assault. The Court further emphasised that the applicants were respectively a legal and a medical practitioner.

In the present case, the Court also considered that regarding the nature of the acts in question, the applicants' conviction did not appear to have constituted disproportionate interference with their right to respect for their private life. Although individuals could claim the right to engage in sexual practices as freely as possible, the need to respect the wishes of the "victims" of such practices – whose own right to free choice in expressing their sexuality likewise had to be safeguarded – put a limit on that freedom. However, no such respect had been shown in the present case. As to the applicants' sentences and their consequences (disciplinary procedure against K.A.), the Court held that the penalties imposed on them had not been disproportionate, especially as K.A. would still be entitled to a pension under the general private-sector scheme for his years of service as a judge, and would not therefore be deprived of all means of subsistence. In those circumstances, the Court considered that the Belgian authorities had been entitled to consider that the prosecution and conviction of the applicants had been necessary in a democratic society for the protection of the "rights and freedoms of others". It therefore held that there had been no violation of Article 8.

In the light of the above case-law, it can be concluded that the right to engage in sexual relations derives from the right of autonomy over one's own body, an integral part of the notion of personal autonomy, which can be construed in the sense of the right to make choices about one's own body. It follows that the criminal law, even the disciplinary law, cannot in principle be applied in the case of consensual sexual practices, which are a matter of individual free will, regardless how much unusual these sexual practices are. Furthermore, it is important to emphasize that in the present case both national courts and the ECHR considered that K.A.'s involvement in the above mentioned practices as such was not reprehensible nor was it considered to be in breach of judicial ethics given the fact that it related to the very private sphere of the people involved, provided of course that there is the full consensus of the participants and these acts remain strictly within the limits of their private sphere.⁸³

3. A.D.T. v. United Kingdom (31-07-2000) – Intentional and unintentional disclosure of privacy

The extent of privacy may depend on the nature of the activity. This question was raised by the UK Government before the ECHR in this case, which related to the criminal conviction of a homosexual who recorded his sexual intercourses on video tapes. According to the Government, the fact that more than two people were involved in the intercourses and that the intercourses were recorded on a video tape

⁸³ ECHR's Judgement of 17-02-2005, K.A. and A.D. v. Belgium, applications nos 42758/98 and 45558/99, §78-88.

meant that it was not founded any right to "private life" according to the Convention. In that case, the Court's comments did not go beyond raising a question "whether the sexual activities of the applicants fell entirely within the notion of 'private life'". The sole element in the present case which could give rise to any doubt about whether the applicants' private lives were involved is the video-recording of the activities. No evidence had been put before the Court to indicate that there was any actual likelihood of the contents of the tapes being rendered public, deliberately or inadvertently. In particular, the applicant's conviction related not to any offence involving the making or distribution of the tapes, but solely to the acts themselves. The Court found it most unlikely that the applicant, who had gone to some lengths not to reveal his sexual orientation, and who had repeated his desire for anonymity before the Court, would knowingly be involved in any such publication.⁸⁴

In the light of the above case-law, it can be argued that as far as judges are concerned, they can fully enjoy the right to respect for their privacy, but any volitional disclosure of their privacy, and in particular their erotic life, may independently constitute a breach of judicial ethics. For this reason, the distinction between intentional and unintentional disclosure of erotic life is of crucial importance for the observance of judicial ethics in the context of judges' private life.

4. Smith and Grady v. United Kingdom (27-09-1999) - Homosexual relationships

In that case,⁸⁵ the ECHR noted that investigations, and in particular personal interviews with the applicants, concerning their private lives, were extremely indiscriminate, while their dismissal from the armed forces due to their homosexuality had a serious impact on their subsequent professional life. Taking into account that the Government did not provide any evidence of a possible threat to the moral and military capability of the armed forces as a result of homosexuals' armed service, the Court held that the applicants' dismissal on account of their sexual orientation violated the requirement of respect for private life.⁸⁶

According to the above case-law, it can be argued that a judge's sexual orientation cannot in any way be a service evaluation criterion or cause of disciplinary prosecution, let alone her or his dismissal, since such treatment would be unfairly discriminatory against her or him.

5. Christine Goodwin v. United Kingdom (11-07-2002) – Transsexuals

⁸⁴ ECHR's Judgement of 31-07-2000, A.D.T. v. United Kingdom, application no. 35765/97, § 25.

⁸⁵ ECHR's Judgement of 27-09-1999, Smith and Grady v. United Kingdom, applications nos. 33985/96 and 33986/96, § 91-92.

⁸⁶ See also ECHR's Judgement of 27-09-1999. Lustig-Prean and Beckett v. United Kingdom. applications nos. 31417/96 and 32377/96, § 84-85.

In that case, the ECHR stressed that refusal of the authorities to legally recognize the new identity of transsexuals, who had undergone gender reassignment, places them in a very perplexed position, in which they may experience feelings of vulnerability, humiliation and anxiety.⁸⁷ Furthermore, the Court refused to regard the chromosome as the crucial element for the legal recognition of the transsexuals' gender identity:⁸⁸ the Court accepted that gender is not determined solely on the basis of biological data. Finally, having taken into account the undisputed international trend in favor of the legal recognition of the new gender identity of transsexuals as well as their social acceptance, the Court found a violation of Article 8 of the Convention because of the authorities' refusal to recognize applicant's new gender identity after her gender reassignment.

Given the findings of the above judgment, it may reasonably be argued that transsexual judges should not encounter obstacles by the national authorities to the process of their new gender identity legal recognition, nor their gender change could be subject to disciplinary procedure in any way.

6. Baczkowski and others v. Poland (03-05-2007) – Prejudiced views and statements

In that case, the ECHR considered that in the assessment of the case it could not disregard the strong personal opinions publicly expressed by a Polish Mayor on issues directly relevant to the decisions regarding the exercise of freedom of assembly by fighting for homosexuals' rights non-governmental organizations. The Court also observed that the decisions concerned were given by the municipal authorities acting on the Polish Mayor's behalf after he had made known to the public his opinions regarding the exercise of freedom of assembly and "propaganda about homosexuality". It was further noted by the Court that the Polish Mayor, who on 9 June 2005 issued decisions banning the stationary assemblies to be organized by the applicants (who were at that time, active in various non-governmental organizations acting for the benefit of persons of homosexual orientation), relied on the argument that assemblies, according to the national law, had to be organized away from roads used for road traffic, expressed these views when a request for permission to hold the assemblies was already pending before the municipal authorities. The Court adopted the view that it might be reasonably surmised that his opinions could have affected the decision-making process in the present case and, as a result, impinged on the applicants' right to freedom of assembly in a discriminatory manner.⁸⁹ In other words, the Court gave base on the real motivations which led to the relevant decisions, based on the statements of a public

⁸⁷ ECHR's Judgement of 11-07-2002, Christine Goodwin v. United Kingdom (Grand Chamber), application no. 28957/95, § 77.

⁸⁸ See supra at the above citation, §82.

⁸⁹ ECHR's Judgement of 03-05-2007, Baczkowski and others v. Poland, application no. 1543/06, § 100.

person.⁹⁰

In the light of the above case-law, it can be concluded that judges, as regarding their involvement in a major public function, should have moderate views on matters relating to sensitive or disputable social issues. In other words, judges, on the basis of judicial ethics, should not manifestly embrace fanatical ideologies and not be influenced by their personal life and/or stance to such an extent that they have prejudiced views on certain issues.

7. Rizos and Daskas v. Greece (27-05-2004) – Sobriety in judges' reactions

In that case, the ECHR held that the interest of the public prosecutor concerned in preserving his reputation with regard to the applicants' published article, did not override the general interest of public information about a case concerning the exercise of the judiciary. As the Court noted with emphasis, judges' service needs the citizens' confidence to thrive. The Court also took the utmost account of the need to protect judges from unwarranted attacks, in particular as judges are obliged to be abstemious and in principle they cannot react to insults against them.⁹¹

Indirectly but clearly, the aforementioned judgement highlights the serious ethical obligations of judges who, even when they accept personal insults, should remain staid and self-restrained. This obligation applies to judges not only during the exercise of their duties but even during their daily private life.

CONCLUSION

Socrates counselled judges to hear courteously, answer wisely, consider soberly and to decide impartially. These judicial virtues are all aspects of judicial diligence, but they are not enough.⁹² Judges need ethical guidance in order to fulfill the very high standards towards which all judges strive. The adoption of a widely accepted ethical frame of reference helps each judge fulfill its responsibilities and ensures that both judges and public are aware of the principles by which judges should be guided not only in their professional but also in their personal lives.⁹³

The common perception of a judge is that of someone in a wig and robes presiding over a court room. In reality judicial office-holders' lives involve much unseen work and battles with the challenges that personal life sets. So, does a judge's personal life matter? Well! Of course it does, but not in the

⁹⁰ See also ECHR's Judgement of 21-10-2010, *Alekseyev and others v. Russia*, applications nos. 4916/07, 25924/08 and 14599/09, § 109 and ECHR's Judgement of 12-06-2012, *Genderdoc-M v. Moldova*, application no. 9106/06, § 53-55.

⁹¹ ECHR Court's Judgement of 27-05-2004, *Rizos and Daskas v. Greece*, application no. 65545/01, §43

⁹² www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf, 4. Diligence, Commentary 1.

⁹³ www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf Foreword

cartoon-like manner. Judges have far more complex (and interesting) personal stories than stereotypes about sexual orientation, race, ethnic background or religion can capture.⁹⁴

⁹⁴ Paraphrasing Federal Judicial Service: Judge, U.S. District Court, District of Nebraska, Kopf, Richard George, herculesandtheempire.com/tag/does-a-federal-trial-judges-personal-life-matter/