

Does Hungary Need a Code of Judicial Ethics?

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Interview with Dr. Zoltan Lomnici, Deputy President of the Hungarian Supreme Court [1]

RA: The judiciary of the United States, as well as certain Asian and African countries have created guidelines for professional conduct. Judges in many Eastern European countries, as part of the democratic transition, also drafted codes of ethics. The Hungarian judiciary, however, lacks such a comprehensive written ethical code. Traditionally, judicial codes of ethics set professional standards for the judiciary and are intended to raise public confidence in the courts. In your opinion, why have Hungarian judges not yet drafted such an ethical code?

ZL: It is true that the Hungarian judiciary has no written code of ethics. However, approached from the perspective of judicial independence, which is a core component of judicial ethics and one of the Copenhagen Criteria required by the European Union of the accession countries, the situation in Hungary is, in this respect, satisfactory. Both the organizational and personal conditions of judicial independence are guaranteed. The judge is subject only to the law and to his or her own conscience. [2] Furthermore, neither the executive nor the legislative branch of government tries to influence the courts' work. For example, the impartial decisions in cases arising from the last general elections [in April 2002] clearly prove that there is no political pressure on the Hungarian courts. [3] With respect to the ethical code, I can say the following: we conducted research on the prevalence of judicial codes of ethics, and found that although such a code exists in Canada and the United States, most European countries do not possess them. I am not saying that we will not draft a code of ethics in the future; the judicial intellectual guilds, the National Council of Justice, and the Association of Hungarian Judges are presently exploring the issue.

Restrictions on non-judicial activities

Even though there is no code of judicial ethics currently in Hungary, the Statute [4] on the legal status and remuneration of Hungarian judges provides numerous ethical provisions. For example, one of the most important sections of the Statute prevents judges from joining political parties or getting involved in any political activity. Judges may not be elected as representatives to the national assembly, or to local or national government. However, in the past few years the issue regarding the political activities of judges was a focal point of many disputes. In most member states of the European Union, judges generally have the opportunity to express their political opinion; moreover, in most of the EU they may accept political functions. For example, I had the opportunity to meet a German judge who was also an official of the local chapter of a political party. Judges in some EU countries may even give speeches at political events. I also



know German judges who have made careers in politics. In summary, we can say that in most Western European countries, the involvement of judges in politics is not prohibited.

In Hungary, the situation is different, because the general trend to keep the judiciary independent from the political arena intensified after the fall of the Iron Curtain. In the previous regime, about fifty percent of the judges were members of the Hungarian Socialist Worker's Party. Many believed that party members were promoted before non-party members. After 1989, the judges were convinced that it would not be good policy to allow judges to become members of political parties. In my opinion, this was the right decision. There are many cases before the courts in which serious party interests clash. For example, right now following the general elections, the courts have had to decide cases that involve disputes between political parties. If the judge is a member of party X, party Y has a legitimate reason to complain and question the impartiality of the judge, claiming that the judge is biased toward party X. Although restricting judges' political activities is a limitation of their freedom of association, a basic civil right, in the given historical situation this restriction is necessary. The past twelve years has proved that this was the right decision.

Furthermore, Act LXVII of 1997 requires that the judge, besides fulfilling his or her professional responsibilities, may be involved only in scientific, artistic, literary, educational, and technical activities. These activities should not jeopardize judicial independence and impartiality, and should not restrict the fulfilment of the judges' official duties. The judge, in addition to political independence, must also preserve economic independence. For example, if a judge starts his or her own enterprise, impartiality may be questioned if he or she hears a case that involve companies representing the judge's own interest groups.

Restricting the judges' involvement in business is not, however, the general practice in Europe. I have an acquaintance in Austria who is a high-ranking judge yet he has his own printing business. Nonetheless, the business activities of judges are limited in Western Europe also. Even in Hungary there are billion-forint disputes before the courts, and if a judge is simply a stock-owner, she or he may have personal interest in the outcome of the case. I agree with the business activity restriction of the Statute.

It is important to note that the law prohibits judges from becoming managing officers or members of boards of trustees of corporations or partnerships. Furthermore, serving as unlimited liability decision makers of corporations is also prohibited.

If we address ethical questions, we have to consider the conflict of interest provision of the Statute. This states that judges should not be employed at courts

where their relatives function as the President, Deputy President, or President of the Judicial Collegium. This is important because no judge should enjoy any benefits under the supervision of her or his relative.

Another ethical aspect of the Statute is the appropriate and fair remuneration of the judges. The Statute, in accordance with the European Charter on the Statute for Judges, emphasizes that judges should receive adequate salary for their services. Sufficient allowances not only deter bribery, but also enable the judges to concentrate only on their judiciary duties. This is important because judicial decisions affect people's lives, wealth, and dignity. If the judges have to take on too many extra responsibilities they are unable to devote adequate energy to the adjudication of disputes.

Independence and impartiality

Independence and impartiality are also ethical issues. The Statute requires that judges be free from any influence and exercise total impartiality while adjudicating cases. For example, in a case in which the State is a party, the judge should not exercise bias merely because she or he is a State employee. Nobody should enjoy any advantages before the law. The principle of total equality of the parties is in concert with European legal customs, and this rule is deeply rooted in the Hungarian legal tradition as well.

A specifically ethical provision of the Statute concerns the conduct of judges. Judges are obligated to exercise unimpeachable conduct that is worthy of their office at all times and must refrain from any behaviour which would detract from the confidence invested in the judicial process and the dignity of the courts. Thus, judges must display proper and respectable conduct not only at the courts but also in private life. It would shed bad light on the judiciary if a judge was constantly partying at night, socializing with criminals, or leading a libertine promiscuous sex life.

There is an interesting, uniquely Hungarian aspect of ethical issues that is quite different in America. In Hungary, judges may not give any statement to the media about cases in the process of adjudication. Only the president of the court, or another person designated by him, may inform the press about cases pending before the court. In America, although cameras are not allowed during the hearing, as soon as they leave the court building, judges may inform the press about the case. In Hungary, this is forbidden. Journalists may attend the hearings, they may even bring cameras into the courtroom and record the proceedings, but the judge may not comment on the case until she or he has ruled and explained the ruling. Following the German model, the courts in Hungary utilize spokespersons. A designated judge or another official of the court is appointed to inform the media about the details of an ongoing procedure. At the Supreme Court, for example, I am the person charged with communications between the Court and the media. This means that one of my duties is to

familiarize myself with the cases by examining the files or consulting with the presiding judge, and brief the press on any of the proceedings before the Supreme Court. The restriction of communication between judges and the media is widely disputed in Hungary, and I believe that there is a suit pending before the Constitutional Court regarding this issue.

Another purely ethical aspect of the same statute is the provision that requires judges to display respectful, impartial conduct towards both parties before the court. Previously, we have discussed respectful conduct regarding the private lives of judges. This provision, however, specifically demands respectful conduct during the judicial procedure. Although, "respectful conduct" is not clearly defined by the Statute, the generally accepted meaning of the expression is sufficient to determine whether or not the judge's conduct is respectful towards clients. Obviously, the judge's conduct is appropriate if she or he uses the proper tone and guarantees the procedural rights of the parties, et cetera.

The 1997 Statute cannot be viewed as a code of ethics. Nonetheless, it regulates the judicial procedure by circumscribing the conduct of judges.

Hungary's particular circumstances

RA: It seems that the Hungarian Constitution and Act LXVII of 1997 sufficiently define those ethical standards that are essential to the seamless operation of a democratic court system. It may seem that there is no need for an ethical code in Hungary. On the other hand, the judiciary of many other formerly socialist countries have found it important to create a compilation of self-guiding ethical standards. Nearly half of these ethical codes are legally binding. Some of these countries have had to struggle with judicial corruption and separation of power issues. Is there a relationship between, for example, corruption in the past and the existence of the code in the present? Do you believe that, in spite of the ethical provisions of the 1997 Statute, Hungarian judges should draft an ethical code? What would be the utility of such a code?

ZL: This is a very difficult question. Apparently, the code does not exist in countries where the impartiality and independence of the judiciary have been evident for hundreds of years. In former dictatorships, there is obviously an increased demand for reestablishing the status of the judiciary, designating the path of the judicial profession, framing the latitude of the judiciary, and providing judges with ethical guidelines. The situation is different, for example, in the United Kingdom and Bulgaria. We have to be frank about it. On his recent Hungarian visit, the President of a South Eastern European country told me himself that after each of their national elections they contemplate replacing all of the judges. We know what happened in East Germany and in the Czech Republic where practically no judges remained in place following the democratic transition.

The situation in Hungary was slightly different. Here, the independence of the courts and the adjudication process have been, more or less, guaranteed since the 1960s. There were, of course, a few isolated cases when certain people attempted to influence judges through informal channels. But nonetheless, fundamentally the judges were free from political pressure. I started my career at the courts in 1979. I have never been a member of the Hungarian Socialist Workers' Party, so I was able to observe the courts with an outsider's eye. As a judge, I have worked on several cases in which State interests were at stake. I have decided many expropriation proceedings, which involved serious financial assets. Yet, I have never witnessed or experienced any attempt by the State to influence the adjudication process. Hungary is half way between the extremes. Following the Velvet Revolution, the legislature codified the ethical standards that, along with the Constitution, maximally guaranteed judicial independence even prior to Act LXVII of 1997 on the Status and Remuneration of Judges. Whether or not Hungarian judges need a code of ethics is also a difficult question. In Hungary, organic legal developments, legal traditions, the Constitution and the relevant provisions of the Statute have created the optimal conditions and framework for the ethical judicial process. For decades, it has been unimaginable in Hungary that the State or other official entities would try to mandate the outcome of the cases or in any way manipulate judges' decisions. Political pressure might have influenced the courts in the 1950s and 60s, but since the so called "Kadar consolidation" of the 1970s, such practices have disappeared. Ever since, the independence of the courts has been respected. After the 1989 democratic transformation, judicial independence has been emphasized with the codification of the ethical rules. In sum, nothing prevents the independent adjudication of cases in Hungary today. Although, the Hungarian judiciary may not need a code of ethics to prevent corruption or assure judicial independence, a guide defining the ethical provisions of the 1997 Statute would prove useful. The Statute works with rather broad concepts which could be precisely defined in executive regulations, but such definitions in statutes are impossible. A code could provide definitions to apply the concepts of the Statute to specific situations. Furthermore, the provisions of the code should be binding in disciplinary hearings. Unlike in dictatorial regimes, where judicial independence is constantly under fire and the courts have very little prestige and authority, in Hungary the public in general is pleased with the work of the courts. Practically the whole of society accepts and respects the decisions of judges and the independence of the judicial process. Nonetheless, a binding code of ethics designating the precise limits and fine-tuning the definitions would facilitate the interpretation of the Statute. A code

could serve as a "Ten Commandments" for judges. For example, in Hungary a judge socializing with a lawyer could generate suspicion. But does this mean that judges cannot interact informally with lawyers outside of the courtroom? There was a concrete case where the impartiality of a judge was questioned because he coincidentally vacationed in the same resort where a lawyer involved in the same case was spending his holiday. In the United States, where it is not unusual that judges and lawyers are members of the same social circles, similar situations generally do not cause conflicts.

The National Council of Justice conducted an international survey to learn how many countries have a code [of ethics] and found that in most Western European countries no code of ethics exists. Although the judiciaries of the United States and Canada have ethical codes, it is safe to say that in well established democracies there is no need for ethical guidelines besides binding statutes. My final conclusion is that the judicial system in Hungary is working fine without the code, but it would be beneficial to draft a guide to facilitate the interpretation of the ethical provisions of existing statutes.

RA: Who do you think should draft the code in Hungary? Should the code be exclusively a judiciary-developed set of rules, or should other entities - lawyers or prosecutors, for example - also be involved in the process?

ZL: I can envision different approaches to the question. There are five organizations in Hungary whose membership includes judges. Two of these, the Association of Hungarian Judges and the Association of Hungarian Administrative Judges, consist exclusively of judges, while the membership of the other three include both judges and lawyers. These five groups could cooperate in drafting a system of ethical rules to assist in disciplinary cases, in instances where a judge has violated procedural laws, or in appeal procedures, when the judgment is invalid because it was delivered by a disqualified judge. I am convinced that no matter who participates in the compilation of a code of judicial ethics, if the code is sanctified and accepted by the judiciary, it could prove useful in disciplinary matters involving judges.

RA: Which institutions guarantee the ethical conduct of judges in Hungary?

ZL: There are disciplinary courts whose function is to adjudicate disciplinary matters involving judges. A judge exhibiting scandalous behaviour, such as appearing in public drunk, thus embarrassing the entire judiciary, would be an example of disciplinary misconduct. A judge committing a crime represents a different line of cases. Interestingly, there are only five or six disciplinary cases a year in Hungary. The majority of these cases involve instances where judges fail to prepare their written opinions in a timely manner. I cannot remember any disciplinary case concerning judges' private lives or political activities. These types of violation usually do not happen. The judges know better.

Ethical rules are governed by common sense and decency. I believe that if the social conditions enable people to live by the rule of law, if the state is fair with the citizens, if human rights are respected, if, and I feel this is the most important condition, there are no cases of discrimination by the courts, and if judges are respectable in their professional as well as their personal lives, the ethical issues we have been discussing will not be questionable. The essence of a trustful social atmosphere is in honest personal relationships which are not only governed by law but also by people's innermost kindness and empathy. Without any doubt, Hungary is on the way to achieving this reliable and honest social climate.

There are certain qualities a judge must have to promote this trusted social climate. Empathy, for example, is one of these important qualities of a good judge. A judge also has to take her or his job seriously because of the lasting effect of her or his rulings on people's lives. For example, a judge can ruin a child's life by awarding custody to an alcoholic parent. The judge must know the law, but it is also imperative that she or he has a positive attitude towards people. Judges also must keep up the appearance of the impartiality of the judicial process. For example, a judge should not be friendly, shake hands, and have an intimate conversation with one of the lawyers in front of the adversary party just before the trial begins, even if the judge and the lawyer used to be classmates. The opposing party will not accept an unfavourable decision, claiming that the judge was biased toward opposing counsel. These questions are evident, and the violations of these rules diminish the prestige and authority of the court. The standards are, however, different from country to country. While in the United States a judge and a lawyer may spend a weekend together on a yacht, in Central Europe a handshake before trial could destroy the authenticity of the verdict.

Once in a while in criminal cases a suspect who is sentenced for life, for example, would allege that the judge was biased and claim that the judge should have acquitted him. But because of a lack of evidence besides the convict's accusation of discrimination, the verdict cannot be questioned. Judges, unfortunately, make wrong decisions all over the world, but questioning the judges' integrity without valid reasons would undermine the entire judiciary process. To thus deprive judges from the freedom of making conscientious decisions should not be allowed.

RA: Making wrong decisions, however, may also indicate a lack of judicial capacity. In your opinion, is there a relationship between the existence of an ethical code for the judiciary and judicial capacity? What is the guarantee that only the most capable professionals occupy the judges' benches in Hungary?

ZL: I believe that there is no direct correlation between the existence of an ethical code and judicial capacity. In Hungary, the appointment procedure of judges is

regulated in detail by Act LXVII of 1997. It is relatively easy to filter out the candidates that are not capable, because professional requirements are extremely high, and the professional aptitude examination is incredibly serious and difficult. After earning a law degree from an accredited law school, candidates usually work as clerks at courts and participate in a three-year training program. Thus, candidates have plenty of opportunity to prepare for the judicial exam. Besides the professional examination, the candidates are also subject to rigorous psychological and physical examinations before their appointment. I believe that this demanding appointment process, which is regulated by provisions of the Statute and other regulations, adequately guarantees that only the most capable candidates become the highest representatives of justice.

RA: Thank you, Dr. Lomnici, for the interview.

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Footnotes

[1] Dr. Zoltan Lomnici currently serves as the President of the Supreme Court of the Republic of Hungary. He was appointed in June 2002. The interview was conducted in Budapest on 13 May, 2002 by Robert Almosd who also translated it from the Hungarian.

[2] Constitution of the Republic of Hungary, Art 50(3).

[3] These cases concerned recounts of the vote in certain constituencies.

[4] Act LXVII of 1997 on the Legal Status and Remuneration of Judges.