

Importance of ethics in preserving the rule of law

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1. Why does professional ethics matter
2. Key concepts
3. Distinction between ethical principles and disciplinary rules
4. Common values and principles

Factors affecting the changing role of judiciary

External

- Changing character of the legislative & executive powers
- Changing attitudes as regards transparency, accountability, freedom and accessibility of information
- Information society
- Role of the media

Internal

- Legal demands
- Democratic demands
- Service related demands
- Judiciaries internationalizing

External factor: Changing character of the activities of the legislative & executive powers



- Ever more entangled and intertwined
- Less codification, rather more policy than law oriented
- Law the instrument of choice to achieve policy goals
- More state intervention and activity

The role of the judiciary has evolved

- It becomes more than before a corrective power
- It adopts an increased role in law-making
- To judicial activism

US judge in Seattle temporarily blocks President Trump's travel ban.

Here's what that means for travelers:

- Trump's executive order kept travelers from 7 countries coming into the U.S.
- Washington State Attorney General asked for a temporary restraining order. A judge granted that order on Friday, meaning those people can travel to the U.S. as they could before.
- The AG's restraining order will stay in place as the judge considers a lawsuit from Washington state.
- The lawsuit asks the court to declare parts of the travel ban unconstitutional. If the lawsuit wins, the executive order could be permanently invalidated nationwide.
- An appeal could put President Trump's executive order back into effect.

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Lady Hale: *“It is much more difficult to devise hard and fast rules which will do justice to everyone than it is to give the courts power to do what is fair, just and reasonable in the circumstances of the individual case.”*



Internal factor: legal demands

- Everyone is entitled to a fair and public hearing within a reasonable time by **an independent and impartial tribunal** previously established by law. /.../(Article 47(2), CFR)



Independence and the rule of law

Judicial independence and impartiality are fundamental guarantees for a fair trial and a **prerequisite for democracy and the rule of law.**

The obligations incumbent on judges, prosecutors and lawyers have been put in place in order to guarantee their independence, impartiality and the effectiveness of their action for the benefit of the people.

Does being a competent judge mean being a good judge?

NO

Irmgard Gris: *“To be a good judge is a matter of character.”*



Elements of judicial independence

- **Legal elements:** institutional framework establishing legislative provisions and constitutional safeguards of judiciary and judges
- **Ethical elements:** the conduct of judges is essential to the credibility of the courts

Judges, prosecutors and lawyers are **the public face of justice**. As such, they have a duty to live up to the highest standards of integrity in order to **preserve public trust** in what is a most fundamental pillar of democracy.

Factors of trust

The seven dimensions of trust:

Consistency: behaving in a reliable and predictable manner



Integrity: striving to be honest and fair in decision-making



Openness: being receptive to ideas and opinions



Ability: the leader's ability to do their job



Understanding: displaying knowledge and understanding of their employees' roles and responsibilities



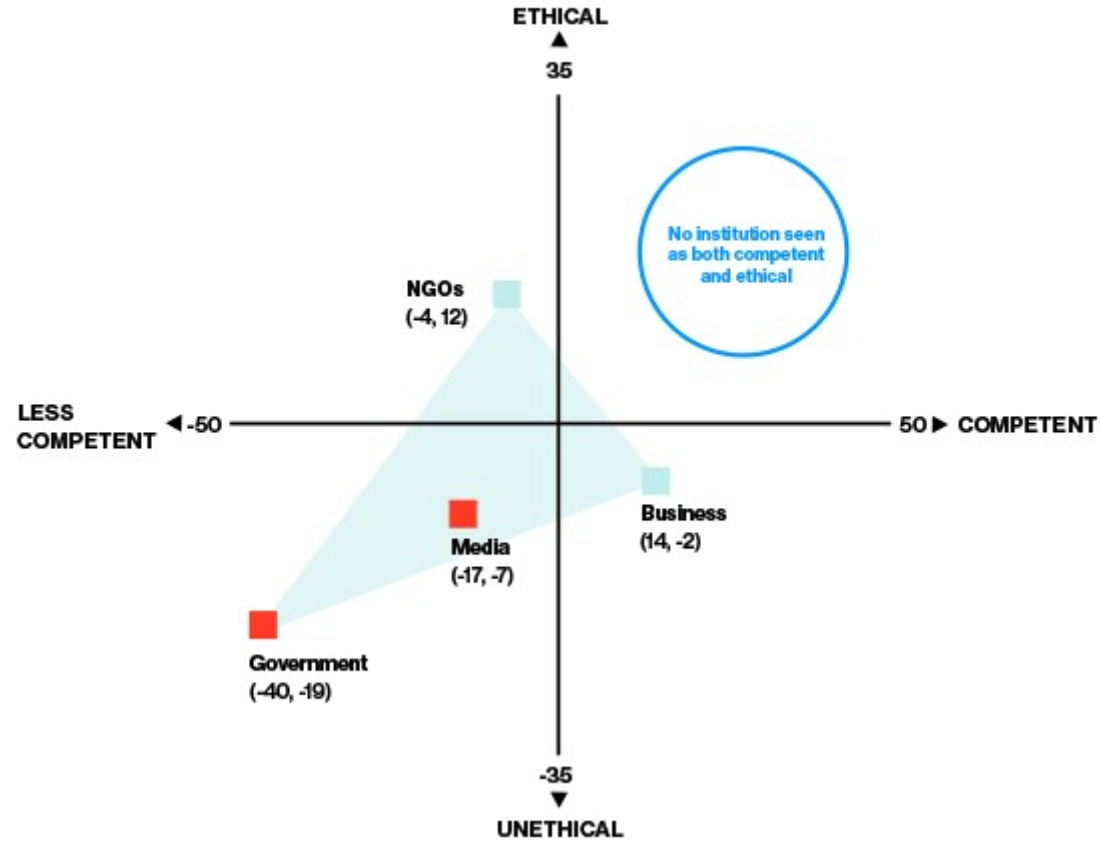
Fairness: behaving fairly and showing concern for the welfare of employees



Accessibility: being available to staff

Dimensions of trust

(Competence score, net ethical score)



Ten commandments for a judge

- Be kind
- Be patient
- Be dignified
- Don't take yourself too seriously
- Lazy judge is a poor judge
- Don't fear reversal
- There are no insignificant cases
- Be prompt
- Common sense
- Pray for divine guidance

Judge Devitt, 1961

What personal qualities must a judge possess?

In their Judicial Ethics report 2009-2010 (the London Declaration) European Network of Councils for the Judiciary (ENCJ) recalls that a judge should perform his role with **wisdom, loyalty, humanity, courage, seriousness and prudence, while having the capacity to listen, communicate and work**. In short, a good judge must also be a good person.

A few examples of ethical dilemmas

- Can judges, prosecutors and lawyers use social media and, if yes, should they exercise restraint?
- Can judges act as arbitrators?
- Can judges give legal advices to their friends?
- Can judges serve as member of a supervisory board of a local football club?
- Can a judge represent his/her mother in a non-contentious matter pending at a local court?
- Are there any restrictions as regards the extra-judicial activities of judges, e. g. can a judge be an amateur actor?

What are ethical standards and principles?

- Ethical principles do not aim to set out directly enforceable standards of behaviour but rather **offer guidance** to legal professionals on how to proceed to overcome the difficulties they are faced with as regards their work and private lives.
- A set of standards of professional conduct **should not be seen as a complete list** of pre-determined activities, which legal professionals are forbidden from pursuing, or as a piece of legislation.
- Such principles should be **drawn up by legal professionals themselves**.

Ethical principles are not disciplinary norms

- Ethical standards should **not be directly applied** as a ground for disciplinary sanctions. However, serious violations of ethical norms can also imply fault and negligence that should, in accordance with the law, lead to disciplinary sanctions.
- Although practices in different countries vary, disciplinary proceedings against judges, prosecutors and lawyers based on the rule of law should correspond to certain basic principles, such as:
 - the liability should follow a violation of a duty expressly **defined by law**
 - there should be **fair trial with full hearing** of the parties and representation of the accused;
 - the law should **define the scale of sanctions**
 - the imposition of the sanction should be subject to the principle of **proportionality** depending on the severity of the misconduct
 - there should be a **right to appeal** to a higher judicial authority.

Codes of ethics

- In recent years, it has become best practice that ethical principles should be laid down in **codes of ethics**.
- Each **legal profession should play a leading role** in the development of its respective code.

Codes of ethics should be living instruments

- GRECO in its 4th evaluation round “Corruption prevention in respect of members of parliament, judges and prosecutors” recommended to numerous countries to adopt codes of ethics for judges and prosecutors respectively. GRECO stresses that codes of ethics are meant to be **living instruments** that help judges or prosecutors in their daily practice and that they need support to successfully fulfil their function. GRECO also highlights the importance of **practical examples** to help judges and prosecutors to work through ethical dilemmas and a range of situations where a conflict of interest might arise.

Relations between judges, prosecutors and lawyers

Judges, prosecutors and lawyers have **different roles** to play in the legal process, but the contribution of both professions is necessary in order to arrive at a fair and efficient solution to all legal processes according to law.



Common values and principles

- Judges, prosecutors and lawyers each have their own set of ethical principles. However, several ethical principles are **common to all professions**.

Let's see a few examples:
compliance with the rule of law
protection of human rights
professional secrecy
integrity and dignity
respect for litigants
competence
fairness and mutual respect

Good training for good judgments

***Thank you very much for your attention. I wish
you all success in resolving your ethical dilemmas!***

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