

EUROPEAN JUDICIAL TRAINING NETWORK

Semi – Final D: Judicial Ethics and Professional Conduct

THEMIS Competition 2018

**LIMITS ON USE OF INFORMATION ACQUIRED IN A
JUDICIAL CAPACITY**

TEAM CZECH REPUBLIC „I“

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„Ethics is knowing the difference between what you have a right to do and what is right to do.”

- Potter Stewart

1 INTRODUCTION

The Article 6 of the Convention of Human Rights guarantees the right to a *fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*.¹ Under the Constitution of the Czech Republic, judges *shall be independent in the performance of their duties and nobody may threaten their impartiality*.² An independent and impartial judiciary is a fundamental guarantee of fair trial and it is a crucial element of democratic state under the rule of law. Judges must remain independent from other branches of power, from other institutions and even from each other. Judicial independence brings protection and courage to judges so they can make unpopular and controversial decisions. Judicial impartiality is a legal and ethical principle which means that judges must stay free from favour towards either or any side. Judicial impartiality is shown in a way in which judges decide cases.³ Their decisions must be based on their own appraisal and interpretation of all relevant facts and in accordance with the law. In their personal lives, judges must avoid any conflict of interest and avoid any behaviour that may create a perception that judicial independence and impartiality and the dignity of the judiciary in general is impugned.⁴ Judicial independence and impartiality guarantee the equality of parties standing in courts.

An independent and impartial judiciary is an essential principle of all democratic states governed by the rule of law. Not surprisingly, more than 40 % of the violations found by the Court of Human Rights between 1959 and 2017 have concerned Article 6 of the Convention of Human Rights.⁵

¹ European Convention on Human Rights. Available at https://www.echr.coe.int/Documents/Convention_ENG.pdf.

² Art. 82 of the Constitution of the Czech Republic, No. 1/1993 Coll.

³ Challenges for judicial independence and impartiality in the member states of the Council of Europe, Information Documents, SG/Inf(2016)3. Available at <https://rm.coe.int/168066d624>.

⁴ Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy. Consultative Council of European Judges. Available at <https://www.coe.int/en/web/ccje/opinion-n-18-on-the-position-of-the-judiciary-and-its-relation-with-the-other-powers-of-state-in-a-modern-democracy>.

⁵ Overview 1959-2017. European Court of Human Rights, 2018. Available at https://www.echr.coe.int/Documents/Overview_19592017_ENG.pdf.

1.1 Judicial Ethics and Professional Conduct as a current topic

Judicial ethics is a collection of professional values and also an integral part of judiciary. Not only judicial independence and impartiality are the main principles leading to enhancement of public confidence in the courts and judges. In fact, judicial independence and impartiality might be considered elements of judicial ethics as well.⁶

Judges work in the interest of the public and their decisions should reach the highest possible quality. Judges are required to be not only professionals in the field of law but also moral leaders. They shall be persons of high moral character and their behaviour and conduct should be reflected in general faith in the integrity of judiciary. Quality of judges has an indisputable influence on quality of justice and the quality of justice is equal to the rate of democracy and rule of law in a country. It is said that one does not stop being a judge by taking off the judicial gown. This is nothing but truth. In both personal and professional lives, judges should be guided by high level ethical principles.

1.2 Abuse of Judicial Power

Professional, trustworthy and persuasive work of judges has an immense influence on the effectiveness of justice. Unfortunately, we have faced increasing mistrust in justice in the Czech Republic in last years⁷. General confidence in the judicial system is getting weaker especially due to long-running criminal trials without satisfactory decision for the public. More than ever before, judges are getting in the eyes of the public. People focus on judges as individuals and value and discuss quality of their work and every single mistake and misconduct. Nevertheless, the reason why the public pays permanent attention to judges is also a seemingly increasing number of cases of judicial misconduct, especially abuse of judicial power. It is obvious that cases of abuse of judicial power occur in every European country and undoubtedly in other countries all over the world as well. More frequently do we read reports about conducting investigation against a judge for suspicion of abuse of power.⁸ Nowadays, when judiciary must deal with criticism for delays in proceedings, lack

⁶ Resolution on Judicial Ethics, European Court of Human Rights, 2008, Available at https://www.echr.coe.int/Documents/Resolution_Judicial_Ethics_ENG.pdf.

⁷ See for example: Důvěra veřejnosti v českou policii trvale roste. Available at <https://www.stem.cz/duvera-verejnosti-v-ceskou-policii-trvale-roste/>.

⁸ See for example Lord chief justice: judges face increasing torrent of threats and abuse. Available at <https://www.theguardian.com/law/2017/dec/05/lord-chief-justice-judges-face-increasing-torrent-of-threats-and-abuse>.

of procedural economy or unsatisfactory results and decisions, personal defects emphasize the complex of current judiciary problems.

Abuse of judicial power is commission of act which is incompatible with the function of judge. It is a breach of power which has been given to a judge to perform and secure justice and it is a breach of rule that prohibits using the position of judge to gain personal advantage. Abuse of power in the course of performing judicial power can have serious consequences. It collides with faith in judiciary and even with faith in justice itself. What more, abuse of judicial power is also a breach of independence and impartiality – in case a judge abuses the power for his personal advantage, it is usually to one party's or even both parties' disadvantage. In case the abuse is done in another person's advantage, it undoubtedly means that the judiciary independence was broken. As a result, abuse of judicial power may undermine foundations of democracy and rule of law as well.

Abuse of judicial power includes various judicial misconducts. This paper is focused on specific misconduct: Abuse of information acquired in a judicial capacity. Today, information is a commodity of high value and power. Having the right information in the right place and at the right time provides its owner with great advantage. For example, electronization of justice brings efficiency and can influence the length of proceedings. On the other hand, it also prefigures threat of abuse of information. Electronization does not only mean cheaper and faster proceedings. It also means that there are plenty of information which are put in one place and are easily accessible. The judge may acquire information of commercial, political, personal or other value, as well as safety-related information, which is inaccessible to the public. Every single judge works with at least one of this information, but it does not mean that the use is boundless. If the judge crosses the limits of legitimate use of information, this misuse turns into commission of misconduct. In some cases, the judge can misuse information acquired in a judicial capacity more or less unintentionally, but there are also situations when the judge misuses the information deliberately.

The aim of this paper is to emphasize the issue of abuse of information and to point out the most frequent motives of this misconduct. As mentioned above, information is extremely valuable but delicate commodity at the same time. Misuse of information can lead to far-reaching consequences. This is why this issue is highly topical and why it is so significant to discuss, even on the international level. This paper also endeavours to propose how to solve various cases of abuse and how to prevent them.

2 LEGAL FRAMEWORK

Taking into account a limited number of pages of this work, it is mainly focused on the use of information acquired in a judicial capacity in the Czech Republic. Nevertheless it cannot be overlooked that the Czech legislation as well as non-binding codes are based on several international documents. Beside the aforementioned Article 6 of the Convention of Human Rights, which aims to the right to a fair trial in general, we should emphasize the Resolution on Judicial Ethics adopted by the European Court of Human Rights in 2008⁹ and The Bangalore Code of Judicial Conduct adopted by the United Nations in 2001 (revised in 2002)¹⁰.

Legal framework of the discussed topic is - in the Czech Republic - formed in general by the Constitution of the Czech Republic¹¹ and explicitly in Act No. 6/2002 Coll. (Act on Courts and Judges), Act No. 99/1963 Coll. (Civil Procedure Code) and Code of Ethics which are described below. The next part of this paper also contains a reference to the newly established Ethics Court and its activities.

2.1 Act on Courts and Judges

In the Czech Republic, rules of handling information obtained by judges in the performance of their professional duties are primarily stated in the Act on Courts and Judges (Act No. 6/2002 Coll.). Given that this is a relatively specific area, there is not an exact description of what is lawful and what is not. The above-mentioned legislation states only general duties and responsibilities of judges. Judges shall perform their duties conscientiously and they must abstain from anything that could undermine the dignity of a judge's function or jeopardize confidence in independent, impartial and equitable decision-making in office as well as in private life.¹² In order to maintain the guarantees of independence and impartiality of the performance of the judiciary, the judges are, *inter alia*, obliged to refuse any interference, coercion, influence, desire or request that could endanger the independence of the judiciary.¹³ Judges are also obliged, even after termination of the judicial function, to keep confidentiality about everything they learned in connection with the performance of their duties, unless they

⁹ Resolution on Judicial Ethics, European Court of Human Rights, 2008.

¹⁰ Bangalore Code of Judicial Conduct adopted by UN. Available at http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

¹¹ As mentioned above in Chapter 1 of this paper (Introduction).

¹² Act on Courts and Judges, Article 80, para 1.

¹³ Act on Courts and Judges, Article 80, para 2 c).

would be relieved of this obligation by a special legal regulation or a person appointed to do so.¹⁴ This very broad legal framework leaves the actual definition of rules on handling information acquired by judges in the performance of their professional duties, on either soft law or case law.

2.2 Civil Procedure Code

Besides above-mentioned rules stated in the Act on Courts and Judges, the provisions on the exclusion of judges are also relevant. Under article 14 of the Civil Procedure Code, judges shall be excluded from hearing and deciding a case where there is a doubt as to their impartiality on account of their personal relationship to the case, parties to the proceedings, or their representatives. Pursuant to the section 15 of this Act, as soon as a judge becomes aware of the facts that disqualify him from a case, he or she shall inform the president of the court thereof without delay. Pending the decision, he or she may perform only exigent acts. This legislature aims on conflict of interest but it can also be applied on abuse of information in some cases.

2.3 Soft law

Over the years, there has been some soft law development in the Czech Republic concerning the ethics of judges, but similarly as in the case of legal regulation, the soft law does not deal directly with the issue of dissolving information. Neither the Code of Ethics adopted in 2000 by the Union of Judges of the Czech Republic nor its' amended version from 2005 contain a single article on this topic.¹⁵ That certainly is a missed opportunity, because even just a brief framework could at least raise awareness of the issue or start a discussion among legal professionals (not necessarily only judges, but also attorneys, academics and others who can contribute to the discussion). A legal framework (even in the form of soft law) can also serve as a guide for disciplinary court and thus help to create case law. Importance of a comprehensive legal framework is enhanced by the fact that the Czech judicial system was disturbed by the 40 years of a Communist regime. Despite the fact that it has been almost thirty years since the Velvet Revolution (1989), changing people's thinking is a long-term process that can take another decade or two. An inspiration how to amend the Code of Ethics

¹⁴ Act on Courts and Judges, Article 81, para 1.

¹⁵ Code of Ethics of the Judicial Union (2000) Available at <http://www.eticky-kodex.cz/eticke-zasady-chovani-soudce/>; Code of Ethics of the Judicial Union (2005). Available at <http://www.soudci.cz/o-nas/eticke-zasady-chovani-soudce.html> (2005).

adopted by the Union of Judges of the Czech Republic could be taken, for example, from above-mentioned Resolution on Judicial Ethics (ECHR)¹⁶ and the Bangalore Code of Judicial Conduct (UN)^{17,18} or from certain foreign codes of ethics¹⁹. Instead of modifying the Code of Ethics, the Union of Judges of the Czech Republic decided to establish a special judicial body – Ethical court, which is empowered to hold opinions both on individual cases and on issues of judiciary in general. Although these opinions are not binding, they can surely help clarify assessment of problematic areas. Unfortunately, the activity of the Ethical Court has been very limited so far. The court gave its official opinion in fact only on the issue of judges' activity on social networks (such as Facebook, Twitter, etc).²⁰

2.4 Disciplinary and criminal liability

In case of violation of above mentioned laws, a disciplinary or a criminal proceeding may be initiated. Under article 87 of the Act on Courts and Judges (Act No. 6/2002 Coll.): *The disciplinary misconduct of a judge is a violation of the judge's obligations or an intentional conduct or conduct by which a judge interferes with the dignity of a judge's office or threatens confidence in an independent, impartial, professional, and fair decision-making judiciary.* In

¹⁶ Under section V. of the Resolution on Judicial Ethics: Judges shall exercise the utmost discretion in relation to secret or confidential information relating to proceedings before the Court. They shall respect the secrecy of deliberations.

¹⁷ Under section 4.10 of the Bangalore Code of Judicial Conduct: Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

¹⁸ There is also a Commentary on The Bangalore Principles of Judicial Conduct from 2007. Available at https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf which states that: In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to judicial duties. This prohibition is principally concerned with the improper use of undisclosed evidence such as, for example, evidence subject to a confidentiality order in a large-scale commercial litigation.

¹⁹ For example: The Model Code of Judicial Conduct adopted by American Bar Association. Under its section 3.5: A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties. Available at https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_3/rule3_5useofnonpublicinformation.html.

or The Statement of Principles of Judicial Ethics for the Scottish Judiciary. Under its section 7.1: Confidential information acquired by a judge in his or her judicial capacity should not be used or disclosed by the judge for any purpose unrelated to the judge's judicial duties. Available at <http://www.scotland-judiciary.org.uk/Upload/Documents/StatementofPrinciplesofJudicialEthicsrevisedDecember2016.pdf>.

or The Code of Judicial Conduct adopted by the Hungarian National Judicial Council. Under its article 5.4: Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge to any. Available at <http://birosag.hu/en/code-judicial-conduct>.

²⁰ Etické meze působení soudce na sociálních sítích. Union of Judges of the Czech Republic, 2017. Available at <http://www.soudci.cz/zpravy-a-stanoviska/pohledy-a-nazory/843-eticke-meze-pusobeni-soudce-na-socialnich-sitich.html>.

severe cases, misuse of information may be even considered as abuse of authority or bribery under articles 329 and 331 of the Criminal Code (Act No. 40/2009 Coll.).

3 ABUSE OF INFORMATION ACQUIRED IN A JUDICIAL CAPACITY

In the next part, this paper deals with several selected cases which show practical examples of how the abuse of information in justice can occur. The primary criterion for the division of cases into categories was the purpose for which judges illegally or unethically misused information obtained in the exercise of their duties. First category contains cases where the purpose was financial profit and second category contains cases where the purpose was other personal profit, regardless of whether the person who benefited from acquired information was the judge himself or another person. Above that we have set aside a third category, which contains cases concerning misuse of information for both financial and non-financial purposes but only if the information was obtained via information system. The usage of information system as a specific tool for accessing information is the pivotal attribute of the last mentioned category.

3.1 Abuse of information for financial benefits

Unlawful or at least unethical enrichment is the cause of many disciplinary proceedings with judges, despite the fact that the average net monthly income of a judge is above the average wage (in the Czech Republic it is approximately three times the average wage. Most often, this will involve accepting a bribe for making a certain decision but there are other ways to get a financial benefit and one of them is the use of information that is not publicly accessible and to which the judge has access due to exercise of his or her profession. These may include, for example, information on forced auctioning, internal information about the operation of a company obtained from insolvency proceedings or, more often, information about the financial problems of parties (natural persons) owning a property or a higher value thing (a car for example) that he or she will have to sell. This information can be used by the judge himself or can be provided to his or her acquaintances, to business competitors of the company involved in the court proceeding or to anyone else.

In the **case of judge J. Z., No. 16 Kss 3/2012 - 113**,²¹ the Disciplinary chamber of the Supreme Administrative Court of the Czech Republic (hereinafter „the Disciplinary chamber“) dealt with a disciplinary action consisting of allegation that the judge in breach of the article 15 paragraph 1 of Civil Procedure Code and the article 80 paragraph 1 of Act on Judges and Courts gave her assistant a written instruction to issue a resolution by which the court gave its consent to the sale of real estate (house and adjacent land) belonging to the underlying assets of the debtors in insolvency proceeding. The real estate in question should originally had been sold directly (out of the auction) to the accused judge who agreed on this procedure with the insolvency administrator. At this point it should be noted that in general such a procedure - direct sale of the property from the debtor's assets to anyone who offers the best price - is not illegal and the law²² allows it. However, it is up to the insolvency administrator to seek for the best offers while the control over his or her actions (selection of the best offer) lies in the hands of the insolvency judge. In this case it means that insolvency judge was supposed to control a sale of property from debtor's assets where the buyer was the judge herself. Subsequently, at the initiative of one of the creditors, the judge cancelled the direct sale of the property in question and ordered the sale of the property in a public auction. In this public action the judge placed a minimum bid and since she was the sole participant in the auction, she acquired ownership of the auctioned real estate. At the first sight, such a procedure may appear to be lawful or at least less problematic, because a public auction should by its very nature be a guarantee that the debtor's assets (real estate in this case) is sold at the highest possible price. However, the problem arises when there are objections to the course of the auction because the person who deals with these objections is the insolvency judge. In this case it meant it was the same person who benefited from the auction so there was a clear conflict of interest. Disciplinary chamber eventually ceased the case because the judge voluntarily resigned before the Disciplinary chamber made the final decision.

To sum up, the most significant conflict with the law in the above-mentioned case was a conflict of interest, which originated from a use of information acquired in a judicial capacity.

The question is:

²¹ Disciplinary chamber of the Supreme Administrative Court of the Czech Republic, Judgment of 12 July 2012, No. 16 Kss 3/2012 - 113.

²² Act No. 182/2016 Coll., Insolvency Act, Article 289, para 1.

- Would the point of view on this topic change if the judge was not the person who decides on objections rose during the auction and did not have any other option to intervene in the auction?
- Is the simple use of information that is not publicly known unethical or even unlawful?

We believe it is at least unethical and every judge should avoid it. Firstly, a public auction is not always very well promoted and the number of people who know about it is limited. Secondly, the judge has an advantage over the other bidders because he or she knows about the auction in advance (before it is officially announced) and hence he or she is able to prepare for the auction (e. g. to secure the funds). The judge may also obtain some additional info that is not available to the other bidders. For all these reasons, the judge is required to keep all the information obtained in the exercise of his profession confidential. The judge should not use this information for his or her own benefit or for the benefit of others.

3.2 Abuse of judicial information for personal benefits

Not only financial interests are the main motive for abuse of information. Personal motive seems to be much more simple and obvious. People are capable of various acts in case it is in favour of their family, their friends or other close persons. The motive that leads judges to commission of this misconduct may be solely personal.

In the case of judge **Š. D., No. 11 Kss 1 /2011-131**,²³ the judge of a district court was charged with violating of Art. 87 paragraph 1 of Act on Courts and Judges for the following conduct: The judge conducted enforcement proceedings in which the obliged person was her own son. She should have pointed out that she was biased immediately. Before that, she asked the distrainor whether the debt had been paid or not. The judge denied she was biased and said that there are many other judges conducting proceedings in cases of their own relatives. She said she only put this query so that there was no delay. The Disciplinary chamber decided that the judge committed a disciplinary offence. Under Art. 15 para 1 of Civil Procedure Code,²⁴ the judge was obliged to notify she was biased in short order after she found out she could have been biased. She could take only immediate and urgent procedural steps. The Disciplinary chamber said that the question was not an urgent procedural act and that the

²³ Disciplinary chamber of the Supreme Administrative Court of the Czech Republic, Judgment of 19 October 2011, No. 11 Kss 1/2011-131.

²⁴ Act. No. 99/1963 Coll., Civil Procedure Code.

judge violated the law with the intention to provide her son with additional time to pay the debt. The judge was punished by decreased wage by 15 % for 6 months.

In the case of **judge L. T.**, the judge of a district court was charged with commission of abuse of power as a criminal offence under Art. 329 of Criminal Code. The judge permitted stakeout of her daughters friends for the purpose of gathering evidence related to criminal activity. But then, the judge told her daughter so that the friends could be warned in advance. The criminal procedure against the judge has not been finished yet. Nevertheless, the Minister of Justice suspended the judge until the criminal procedure is ended. In case the judge is found guilty, it is an obvious act done in favour of the judge's daughter's friends that is for the personal reasons. Such abuse of information might have serious and far-reaching consequences. It may thwart ongoing investigation of criminal activities and the whole criminal proceedings as well. One would say this conduct is almost unimaginable to happen as the abuse is so striking. It is definitely in stark contrast to principles of moral integrity expected from the judge.

In the above-mentioned cases the judges' motive was clearly private and personal without any intention to enrich them financially. Clear personal motive is common for these cases. In these cases, the motive is based on human relationships.

The question is:

- Could we ask how to prevent judges from abusing information in favour of themselves or other people?

If the person, of whom favour the judge could proceed, is a party to this legal dispute, measures against suspicion of partiality should be taken. Nevertheless, as the first case shows, the judge may intentionally ignore his duty to notify the bias so that he can make any procedural act or get some time to make any other arrangements. The procedural measures against suspicion of partiality under procedural codes might seem insufficient. In general, it seems that abuse of information for personal benefit is a question of character and moral traits of each judge. This is why the prevention or solution may be more complicated. Even though the judges should be persons of high moral character, which is one of the requirements to become a judge, it is almost impossible to predict how the judge would act for example in case he or she could use any information to help his or her family or close friends, in the far future moreover. There is never a certainty that the judge would proceed strictly in

compliance with law and ethics in disadvantage of his or her family or close friends. In one moment the judge must decide which way to proceed and this situation might be very difficult. That is why there could be another person, for example a professional, with whom the judges could discuss their opinions and dilemmas. We also believe that the moral integrity of judges should be protected and secured through special trainings, courses or seminars. A special institution or other arrangements to take care of judges' moral integrity should be created.

3.3 Abuse of judicial information systems

One of the issues many European countries are currently dealing with is the question of electronization of justice (e-justice) and particularly the question of electronic court filing. E-government is usually defined as „*the use of information and communication technologies, and particularly the Internet, as a tool to achieve better government.*“²⁵ The same definition could be used for justice, only by replacing the word e-government with the word e-justice. Electronization can improve efficiency of justice and a speed of court proceedings, in a longer period of time decrease its budget and also increase trust between society and the judiciary, since it can help with a transparency of justice. An indisputable advantage of keeping judicial documents including all case – related information in digitized (electronic) form instead of the traditional paper form is the possibility of remote access to court documents which allows parties to a dispute and their attorneys and another involved person to examine and find information without visiting the courthouse.²⁶

However, electronic court filing and judicial information systems can also bring some risks and threats. One of the dangers of these systems is that they accumulate a considerable amount of information in one place. The first thing that comes to mind is usually how to secure these systems against external unauthorized access. Nevertheless, we should also ask how to secure them against internal (authorized) access. How extensive access to the judicial information systems should judges (and court staff as well) have? Should their access be

²⁵ OECD (2003). The e-Government Imperative. Paris, France: OECD Publications Service. Available at https://www.oecd-ilibrary.org/governance/oecd-e-government-studies_19901054.

²⁶ Risk factors in e-justice information systems. J. Rosa, C. Teixeira, J. S. Pinto, Government Information Quarterly 30 (2013), p. 241 – 256. Available at https://ac.els-cdn.com/S0740624X13000385/1-s2.0-S0740624X13000385-main.pdf?_tid=9ba815fb-a1bd-4f53-954b-74d16af4d8bc&acdnat=1527577556_94a83d2bca061c0a32304057fb077716. The Impact of the e-Court Solution on the Polish Judicial System. D. Sielicky, <http://www.nowemedia.org.pl/joomla/index.php/orzecz/item/34-the-impact-of-the-e-court-solution-on-the-polish-judicial-system>.

limited and controlled? It will be illustrated on two Czech cases, which were solved by the Disciplinary chamber, that these questions are not purely theoretical.

In the **case of judge O. H., No. 13 Kss 13/2011-169**,²⁷ the judge of a district court has been charged with violating Art. 80 paragraph 1 of Act on Courts and Judges²⁸ for the following conduct: The judge repeatedly and without justification accessed the judicial information system in order to get access to the documents related to a criminal case assigned to another judge of the given district court. He was also accused that, moreover, he modified one document related to the criminal case concerned. At the same time the judge asked the judge to whom the case concerned was assigned, how will be the case solved and he told her, that the accused one is a person known in media and that the whole criminal prosecution against him is a „conspiracy.“ The judge did not deny that he had looked into the documents related to the case concerned. However, he argued that he was only interested in the information about stage in which the case is. Secondly, he argued, that there is no statutory regulation or internal instruction prohibiting judges to get information about proceedings pending at the court to which they are assigned to. Thus, he claimed that he did not breach any duty. The claim that he has changed some document the judge rejected as untrue. The Disciplinary chamber decided that the judge committed a disciplinary offence. At the same time the Disciplinary chamber made a general conclusion, that judges can access documents related to the cases assigned to other judges only for work and study reasons.

In the second **case of judge R. B., No. 11 Kss 4/2017-49**²⁹ the judge has been disciplinary prosecuted since he without justification – without a connection to his work – searched for information at the judicial information system and made copies of some documents. Parties to the cases that the information sought was related to were persons connected to the accused judge in some way (e. g. his mother-in-law). The judge intended to use the documents and information obtained for his private purposes or to the detriment of the persons with whom he had long-standing disputes (e. g. to the detriment of his wife). Unfortunately, the Disciplinary chamber came to the conclusion that the allegation of the disciplinary offence was made belatedly and therefore it has to stop the trial.

²⁷ Disciplinary chamber of the Supreme Administrative Court of the Czech Republic, Judgment of 10 May 2012, No. 13 Kss 13/2011-169.

²⁸ Act on Courts and Judges, Art. 80 para 1.

²⁹ Disciplinary chamber of the Supreme Administrative Court of the Czech Republic, Judgment of 5 October 2017, No. 11 Kss 4/2017-49.

In the mentioned cases it is more or less obvious that the judges entered the judicial information systems in order to read judicial documents for their private purposes and it is clear that the searched information was not connected to the cases assigned to them. But imagine another and little bit less clear cases.

The question is:

- What is still related to the agenda of a particular judge and what is not?

Imagine there is a case brought to the court which is not assigned to a certain judge. However, this judge will access the judicial system with the intention to read the action, the defendant's statement, and statements of other involved parties and later he or she will also read the draft of the judgement.

- In what circumstances is such conduct of the judge justified and „authorized?“

- Is such conduct justified if the judge is dealing with a similar case at the time and therefore she or he wants to find out what other aspects of the case he or she should think about and what other arguments should be considered?

The answer will probably be yes, since the search of the mentioned information will be related to the work of the judge. We can also ask whether it is justified if the judge reads documents in the judicial system about cases not assigned to him or her in the situation when the judge is not dealing with the similar cases at the time however, the judge reasonably expects to solve similar cases in the future. Also, in this situation the answer will probably be positive.

- May the judge, however, search for some documents in the judicial information system just out of his or her interest (or simply out of curiosity)?

In that case the link to the agenda assigned to a certain judge will be already very limited or will not be given at all. This conduct could be probably accepted if the judge reads the documents only, but he or she will not spread them and mainly, will not use them for any private purposes. It is also possible to consider whether unauthorized and unjustified access occurs in the situation when the judge uses the acquired documents to write some legal paper or to teach students at a law school.

A possible solution to the problems suggested is to limit the access of judges to certain cases and documents in the information system. Firstly, it is possible to limit their access only to documents related to the cases which are pending before the court to which certain judge is assigned. It means that the judges do not have access to the cases solved at another court of the country. However, the access can be further reduced in the way, that e. g. penal judge would have access only to the criminal cases pending on the particular court and thus he or she would not be able to acquire documents about civil and other cases pending on the same court. Another preventive measure may consist of monitoring what documents the judge displayed in the judicial system with the aim to discourage the judges from displaying documents unrelated to the cases solved by them. In this context, however, it is not enough to deal solely with the activities of judges, since also judicial trainees and other court staff have access to the judicial systems.³⁰

4 CONCLUSION: PERSPECTIVES AND RECOMMENDATIONS

In the previous text, we have tried to explain and illustrate that the information which the judges acquire in connection with the performance of their duties can cause them some ethical dilemmas. In some situations, the judges may be tempted to use acquired information for their personal benefit. In this chapter we would like to outline how these problems can be addressed. We assume that the cases of abuse of judge's office and therefore also cases of abuse of information acquired in a judicial capacity will never be completely eliminated. With power always comes a risk of the abuse of power. However, it is possible to imagine some measures which can decrease such cases. Some definite proposals have already been mentioned in relation to the relevant cases. Therefore, we will mention some more general measures in this chapter. We think that the most important is the personality and moral quality of each individual judge. Another our premise is that prevention is more effective than subsequent punishment (and threat of punishment). The proposed measures are based on these assumptions.

³⁰ In the Czech Republic, for example, a risk of information leakage by administrative staff to the court is discussed. The solution proposed is usually to increase their salaries to attract better employees to such positions and primarily to decrease the risk that this staff will be motivated to sell non-public information. See: Soudce zneužíval vstup do justičního systému pro soukromé účely, přišla na to policie, E. Paseková. Available at <http://www.ceska-justice.cz/2018/05/soudce-mel-zneuzyvat-vstup-justicniho-systemu-soukrome-ucely/>. On the contrary, in the case of other court staff can the problem of misuse of information be even more serious. In the cases when such behaviour is not possible to punish by means of criminal law, the behaviour will not be often punished at all, since there are usually no binding ethical codes for administrative staff to the court.

The first crucial point is the question of selection of judges and judicial trainees. The ways in which they are selected vary from country to country in Europe. While in some countries the selection of judicial candidates is centralized, in other countries it depends on a particular court. Interestingly, in some countries where there was no centralized system of selection it is implemented now (e. g. the Czech Republic) while other countries leave this system at the same time (e. g. the Netherlands). In our opinion, regardless of which one of these systems is selected, education on issues of judicial ethics should be part of preparation of judicial candidates. We also think that the questions of judicial ethics and professional conduct should be part of final examination of such candidates. Judicial trainees usually prepare some drafts of judicial decisions as a part of their final examination. Similarly, they could also deal with a practical (and real) case from the area of judicial ethics. The essence of the matter would not be primarily the testing itself, but rather the fact, that the trainees (and also the examiners, who are usually judges) will be forced to think about these issues and discuss them.

Another topic is, that there should be someone with whom may the judges talk if they are already facing some ethical dilemma. There are more possibilities how this measure could look like. Firstly, an ethics committee (for the whole country or in each judicial district,) could play the role of such consultant. In the event that a judge finds himself or herself in a situation when he or she is unsure of how to deal with ethical issues, he or she could turn to such an authority. At the same time, the task of such a committee could be to issue recommendations how to behave in certain model situations. It was already mentioned in the second chapter of this paper that the Ethical court as a part of the Union of judges is trying to play this role in the Czech Republic. The second possibility is that the role of such a consultant would be exercised by a workplace or external mentors. Some of such mentors could be highly experienced judges as well as prosecutor and some of them psychologists. Also, this approach is already present in the judicial systems of some states, e. g. in the Netherlands.³¹ The question of emeritus judges is currently being discussed in the Czech Republic. However, it is usually only discussed that they may temporarily return to the office of the judge to temporarily replace judges who are long-term ill or who are on maternity leave. In our opinion, being such mentor could be another role of emeritus judge with lifelong experience.

³¹Best practises in training judges and prosecutors: Court mentors. Available at [http://www.ejtn.eu/Documents/Methodologies_Resources/Best%20practices%20Lot%201%20EN/IC_21-I_Netherlands_ver2_EU_en%20\(2\).pdf](http://www.ejtn.eu/Documents/Methodologies_Resources/Best%20practices%20Lot%201%20EN/IC_21-I_Netherlands_ver2_EU_en%20(2).pdf).

When a person performs a certain function for a long time with which power is attached, he or she may, after some time, lose a perspective. Considering that judges are usually appointed for a life (or until reaching some age), this could be their case. Long-term performance of professionally and emotionally demanding work can also cause burnout syndrome. Taking these facts into account, the question is whether the judges, after a certain period in the office, should not be given some time of “professional leave.” The essence of such a leave would not be doing anything. Instead, at this time the judges could attend language courses, go to an internship abroad or teach judicial trainees.³²

³² Šimíček, V. Soudci by měli mít nárok na tvůrčí volno, aby nevyhořeli. Available at <http://www.ceska-justice.cz/2016/10/vojtech-simicek-soudci-meli-mit-narok-na-tvurci-volno-aby-nevyhoreli/>.

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