司法倫理* 原則、價值和特質 上

譯文／法官學院提供

前言

歐洲司法委員會網絡（European Network of Councils for the Judiciary 簡稱 ENCJ）成立於 2004 年，旨在促進歐盟會員國之國家機構間的團結，這些機構係獨立於行政及立法機關，並負責支持司法機關執法之獨立性。ENCJ 每年至少召開一次會員代表大會，該會被賦予為完成其委員會任務的所有權力。此份倫理原則是依 2007 年 6 月在布魯塞爾舉行的 ENCJ 會員代表大會決議所編寫，作為歐洲法官的行為準則，並建議 ENCJ 會員和觀察員在國家及歐盟層面上積極推動此等原則。司法院為使法官有明確遵循之倫理規範，業於 2012 年 1 月 5 日依法官法第 13 條第 2 項訂定發布「法官倫理規範」，法官學院鑑於此份倫理原則亦係提供歐洲法官職務內外行止之準據，頗具參考價值，爰予中譯以供我國法官借鏡。

INTRODUCTION 引言

The affirmation of principles of professional conduct for judges strengthens public confidence and allows a better understanding of the role of the judge in society.

法官專業行為原則的確立可以強化公眾信心，並且更加理解法官在社會中的角色。

Traditionally, the role of a judge is to apply the law or resolve conflicts by the implementation of the law. The duty to act lawfully guarantees against any arbitrary behaviour on the part of judge.

傳統上，法官的角色是適用法律或實行法律而解決紛爭。依法行事的義務確保法官不會有任何專斷行為。

Nevertheless, in our European societies, the judge's role has evolved: it is no longer confined to being "the mouthpiece of the law"; the judge is also, to a certain extent, a creator of law, which requires responsibilities and ethical rules consistent with this evolution.

然而，在我們歐洲社會中，法官的角色業已演化為：不再侷限於成為“法律的代言人”；法官在某種程度上也是法律的創造者，並要求責任和倫理規則應該符合此等演化。

Moreover, our societies are demanding more transparency in the functioning of the public bodies.

此外，我們的社會對於公務機關的運作要求更加透明。

Society's expectations of judges have caused the European Network of Councils for the Judiciary to reflect on the question of judicial ethics. It is concerned with striking a balance between the independence of justice [to which everyone is entitled], the transparency of institutions, the freedom of the press and the public's right to information.

Judicial ethics have been addressed in a positive manner, to emphasize the common, founding values of the judge's work, preventive principles and personal qualities and to response to the public's expectations.

社會對於法官的期望促使歐洲司法委員會網絡思考司法倫理的議題。其間涉及「人人有權主張」之司法獨立、機關透明度、新聞自由及公眾知情權之平衡。

司法倫理係以正向態度提出，強調法官工作的共同、基礎價值、預防原則及個人特質，並且回應公眾的期望。

Independence, integrity, impartiality, reserve and discretion, diligence, respect and the ability to listen, equality of treatment, competence and transparency are the common values identified [as essential to the judicial role] (Part I). The judge also demonstrates personal qualities of wisdom, loyalty, a sense of humanity, courage, seriousness and prudence, an ability to work and an ability to listen and to communicate effectively. A judge is aware that his professional behaviour, his private life and his conduct in society have an influence on the image of justice and public confidence (Part II).

獨立、正直、公正、保守與審慎、勤奮、尊重與傾聽能力、平等對待、適任與透明度被確認為司法角色必要的共同價值（第 1 部分）。法官也展現出智慧、忠誠、人性、勇氣、嚴肅和謹慎的個人特質，以及工作、傾聽與有效溝通等能力。法官應認知其專業行為、私人生活和社會行為，影響司法形象和公眾信心（第 2 部分）。

PART 1 – THE VALUES / MERITS 價值/優點

The following principles of ethics have been defined from the following question: what do society and citizens expect of a judge?

下列倫理原則係依：社會和公民對法官的期待為何？予以界定。

1. INDEPENDENCE 獨立

Independence is not a privilege granted for the benefit of Judges.

獨立並非基於法官利益所授予之特權。

Independence is the right of every citizen in a democratic society to benefit from a judiciary which is, (and is seen to be), independent of the legislative and executive branches of government, and which is established to safeguard the freedom and the rights of the citizen under the rule of law.

獨立是民主社會中每個公民均可自司法機構受益的權利，該權利乃（且被視為）獨立於政府的立法和行政部門，並為保護公民在法律規範的自由與權利所設。

It is up to each judge to respect and to work to maintain the independence of the judiciary, both in its individual aspects and in its institutional aspects.

每位法官都應該尊重和努力維護其個人層面及體制層面的司法獨立。

This independence leads him to apply the law to the matters which are placed before him in a specific case, without fearing to please or to displease all forms of power, executive, legislative, political, hierarchical, economic, of the media or public opinion.

這種獨立性使法官於特定個案適用法律時，無懼於取悅或冒犯行政、立法、政治、階級、經濟等所有權力形態，及媒體或公眾意見。

A judge also takes care to remain independent of his colleagues and all pressure groups.

法官也應注意對同僚及所有壓力團體保持獨立。

2. INTEGRITY 正直

The judge fulfils his role with integrity, in the interests of justice and society. He has the same duty of integrity in his public life and in his personal life.

法官基於正義和社會的利益，履行其正直職責。法官對於公共生活及個人生活，也有相同的正直義務。

Two duties can result from this principle of integrity: the duty of probity and the duty of dignity or honour.

正直原則產生兩項義務：廉潔的義務和尊嚴或榮譽的義務。

2.1. Probity廉潔

Probity leads the judge to refrain from any tactless or indelicate behaviour, and not just behaviour which is contrary to law.

廉潔促使法官避免任何不明智或不適當的行為，而不僅是違反法律的行為。

The judge exercises his judicial functions without favouritism.

法官行使司法職權不得偏私。

He dedicates the main part of his working time to his court activities.

他將主要工作時間致力於法庭活動。

He ensures the correct use of resources conferred upon him for the administration of justice and does not abuse those resources or use them inappropriately.

他確保執法時正確的使用賦予他的資源，不濫用或不當地使用這些資源。

He does not seek unwarranted interventions in order to achieve any transfer, appointment or personal promotion, nor act to seek to procure an advantage for himself or for others.

他不會尋求不合理的干涉以達成任何調動、任命或個人升遷，也不會為自己或他人謀取利益。

He refuses to accept any gifts or advantages for himself or for those close to him while exercising his functions as judge.

履行法官職責時，他拒絕接受任何給自己或有親近關係者的禮物或利益。

2.2. Dignity and honour尊嚴和榮譽

The judge exercises his functions by applying loyally the rules of procedure, by showing concern for the dignity of individuals and by acting within the framework of the law.

法官經由忠實地適用程序規則、表達對個人尊嚴的關注及在法律範圍內，履行其職務。

Courtesy and intellectual probity govern his relations with all the professionals within the justice system, the secretariat, clerks, advocates and other lawyers, magistrates, the parties involved in cases and the press.

禮貌和智慧的廉潔性決定他與司法體系內所有專業人員，即秘書處、書記官、檢察官和其他律師、治安官、案件當事人及新聞媒體的關係。

（文轉三版）

註釋

* These ethical principles have been written according to the decision taken by the ENCJ General Assembly which took place in Brussels in June 2007. They are the result of a two years work. The ENCJ Members and Observers should be consulted on this document. If these principles are adopted, European judges should be consulted.
這些倫理原則是依 2007 年 6 月在布魯塞爾舉行的 ENCJ 大會決議所編寫，為歷時兩年的成果。ENCJ 成員和觀察員就此文件應受諮詢。如果這些原則獲得採納，歐洲的法官應受諮詢。

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三、本刊歡迎來稿有關實務問題研討、判決評析、法制論述、國內外司法新知等文章，並得於本院網站。
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Honour requires to a judge to ensure, through his professional practice and person, that he does not jeopardise the public image of the judge, the court and the justice system.

榮譽要求法官經由他的專業實踐和個人，確保不危害法官、法院和司法系統的公眾形象。

3. IMPARTIALITY 公正性

Impartiality and people's perception of impartiality are, with independence, essential to a fair trial.

公正性和民眾對公正的認知，與獨立性，對於公平審判均屬必要。

The impartiality of the judge represents the absence of any prejudice or preconceived idea when exercising judgment, as well as in the procedures adopted prior to the delivery of the judgment.

法官的公正性表現於執行審判職務時及在作出裁判前所適用的程序，沒有任何偏見或先入為主的意見。

The judge is aware of the possibility of his own prejudices**.

法官應意識到自己或有偏見的可能。

To guarantee impartiality, the judge:

為了確保公正性，法官應：

• Fulfils his judicial duties without fear, favouritism or prejudice;

• 無畏懼、無偏私或無偏見地履行其司法職責；

• Adopts, both in the exercise of his functions and in his personal life, a conduct which sustains confidence in judicial impartiality and minimises the situations which might lead to a recusal;

• 在履行職責及個人生活中，採取支持司法公正性並且減少可能導致迴避的行為；

Recuses himself from cases when:

下列情形應該自行迴避：

• he cannot judge the case in an impartial manner in the eyes of an objective observer;

• 無法以客觀的觀察者眼光以公正的態度審判案件；

• he has a connection with one of the parties or has personal knowledge of the facts, has represented, assisted or acted against one of the parties, or there is another situation which, subjectively, would affect his impartiality;

• 與當事人一造有關係或對事實有個人認知，曾代表、協助或採取行動不利於其中一造，或另有主觀上影響其公正性的情形；

• he or a member of his family has an interest in the outcome of the trial.

• 自己或家庭成員對判決結果有利害關係。

A judge has a duty of care to prevent conflicts of interest between his judicial duties and his social life. If he is a source of actual or potential conflicts of interest, the judge does not take on, or withdraws immediately from, the case, to avoid his impartiality being called into question.

法官有義務避免其司法職責與其社交生活間的利益衝突。如果他是實際或潛在的利益衝突根源，法官不得審理該案或應立即退出，避免其公正性遭受質疑。

A judge ensures that his private life does not affect the public image of the impartiality of his judicial work.

法官應確保其私生活不致影響其司法工作公正性的公眾形象。

Impartiality does not prevent a judge from taking part in social life in order to carry on his professional activity.

公正性並不禁止法官參與社交生活以從事其專業活動。

He is entitled to complete freedom of opinion but must be measured in expressing his opinions, even in countries in which a judge is allowed to be a member of a political organisation.

法官享有完全的意見自由，但表達自身意見時必須斟酌權衡，即使在允許法官可為政治團體成員的國家，亦同。

In any event, this freedom of opinion cannot be manifested in the exercise of his judicial duties.

無論如何，這種意見自由不能在其履行司法職責時顯露出來。

4. RESERVE AND DISCRETION 保守與審慎

A judge avoids any conduct likely to promote the belief that his decisions are driven by motives other than the fair and reasoned application of the law. At the same time, a judge is himself a citizen and entitled, as such, outside the exercise of his judicial functions to freedom of expression recognised by all international conventions protecting human rights.

法官應避免任何可能會促使民眾認為其裁判，係基於公平、合理的法律適用以外的其他動機所做出之行為。同時，法官身為公民，於行使司法職責之外，享有所有國際人權公約認可之表意自由。

A judge makes every effort not to offend, in exercising his functions and in his private life, the trust that individuals hold in him.

法官於行使職權和私人生活，應竭盡全力不違反民眾對他的信任。

The judge's reserve and discretion involve a balance between the rights of the judge as a citizen and the constraints linked to his function.

法官的保守與審慎涉及法官身為公民的權利和因其職務連帶之限制間的平衡。

4.1. In public life 公共生活

In politics, a judge, like any citizen, has the right to have a political opinion. His task, by showing this reserve, is to ensure that individuals can have every confidence in justice, without worrying about the opinions of the judge.

在政治上，法官和任何公民一樣有權享有政治見解。他的任務是藉由展現保守，確保人人都能信任司法，而毋須擔憂法官的見解。

A judge exercises the same reserve in his dealings with the media. He cannot, in the name of freedom of expression, appear to be partial or in favour of one party. In facing criticism or attacks, a judge exercises the same caution.

法官應採取相同的保守態度與媒體互動。他不能以表達自由為名，而顯現偏頗或有利於一造當事人。面臨批評或攻擊時，法官應採取同樣的謹慎態度。

A judge will refrain from commenting on his decisions, even if they are criticised by the media or by academic commentators and even if they are overturned on appeal. The way in which he expresses his opinion is in the reasoning of his decisions.

法官應避免評論自己的裁判，即使遭受媒體或學術評論者的批評，甚至被上級審推翻。他應以判決理由作為表達意見的方式。

At the same time, the obligation of reserve cannot provide a judge with an excuse for inactivity. While he should not speak on cases with which he deals personally, the judge is nonetheless ideally placed to explain the legal rules and their application. The judge has an educational role to play in support of the law, together with other institutions which have the same mission.

同時，保守義務不能成為法官不作為的藉口。雖然法官不應談論他個人所處理的案件，他仍然是解釋法律規則及其適用的最理想人選。法官應與其他具有相同任務的機構，共同扮演支持法律之教育者角色。

When democracy and fundamental freedoms are in peril, a judge's reserve may yield to the duty to speak out.

當民主和基本自由處於危險時，法官的保守即應退讓予公開表達之義務。

4.2. In his private life 私人生活

Apart from carrying out his duties, a judge refrains from asserting his status as a judge in his dealings with third parties. He does not give the impression of wanting to put pressure on third parties or cause them to think that a judge is entitled, on a personal level, to exercise powers that the law vests in him in the course of his judicial activities.

除了履行職責外，法官與他人交往時應避免主張其法官身分。他不能形成向他人施加壓力，或使他人認為法官有權在私人層次行使其於司法活動由法律賦予之權力的印象。

Like any person, a judge has the right to his private life. His duty of reserve does not preclude him from having a normal social life: it is enough if he takes some common sense precautions in order to avoid undermining the dignity of his office or his ability to exercise it.

如同任何人，法官有權享有私人生活。 他的保守義務並不妨礙他擁有正常的社交生活：只要他採取一些常識性的預防措施，以避免損害其職務的尊嚴或職權的行使已足。

5. DILIGENCE 勤勉

Diligence is necessary to obtain and increase public confidence in justice.

為了獲得和增加司法的公眾信任，勤勉是必要的。

The judge is diligent in handling cases. That means that they are dealt with and judged within a reasonable period appropriate to the subject matter, while ensuring the quality of the decision.

法官應勤勉地處理案件。意即在符合案件內容的合理期間內，作處理及審判，並確保裁判的品質。

The promptness of legal proceedings is influenced not only by legislation and the resources made available to the justice system but also by the attitude and work of the judge.

法律程序的迅速不僅受到立法及司法系統可用資源的影響，也受到法官態度及工作的影響。

The judge 法官

• improves his training in order to avoid any delay in the proceedings caused by a nonprofessional approach.

• 應加強訓練，以避免因專業欠缺導致訴訟程序的任何遲延。

• maintains throughout his life the highest level of professional competence.

• 應終身保持最高程度的專業競爭力。

• uses all the legal tools that he learns.

• 應善用所學習之所有法律工具。

In each procedure, he ensures that reasonable deadlines are set for the parties and for himself.

在每個程序中，他應確保為當事人及自己設定合理的期限。

The judge makes every effort to conduct proceedings efficiently and to make his decisions without delay.

法官應盡力使訴訟程序有效率地進行，避免裁判遲延。

（下期待續）

註 釋

** It is a matter of subjective and objective impartiality. Objective impartiality is related to the functions and the subjective impartiality concerns the personality of the individual.
此係主觀和客觀公正的問題。客觀公正與職務有關，主觀公正與個別人格有關。

WEEKLY 周刊 徵稿啓事 一、本刊歡迎兼顧理論與實務、探討司法制度、法學新知的作品。文長宜在八千字以內，以利刊出。二、本刊並以利參考。本刊歡迎一次刊出文章並將置司法周刊的故事。及後請加註，以利參考。三、本刊歡迎一次刊出文章並將置司法院的故事。及後請加註，以利參考。 WEEKLY 周刊 每週出刊 訂閱 郵撥 號 4377 戶 司法周刊 郵幣400元 訂閱 郵撥 號 4377 戶 司法周刊