司法倫理 原則、價值和特質 下

譯文／法官學院提供

6. RESPECT AND THE ABILITY TO LISTEN 尊重和傾聽能力

Society and its members expect a judge in the exercise of his functions to respect them and hear them.

社會及其成員期待法官履行職務時尊重他們並聽取他們的意見。

Respect may be thought of as the judge's aptitude to show due consideration to people's position and their dignity.

尊重可被認為是法官展現對人的地位和尊嚴予以適當考慮的能力。

Listening should be viewed as the judge's aptitude to pay attention to the exposition of facts and technical reasoning put forward by the parties and their counsel.

傾聽應被視為是法官具有關注當事人及其律師提出之事實闡釋和專業論述的能力。

The judge in his dealings with the public, lawyers, his colleagues and administrative staff behaves in a manner which is dignified, correct and receptive.

法官與公眾、律師、同僚及行政人員互動時，應以莊嚴、端正且接納的態度為之。

In his organisation of work, a judge takes into account and gives care and attention to the requirements of all those affected by the case.

在他的工作安排中，法官會斟酌、考慮並注意所有受案件影響者之需求。

He creates a serene atmosphere in his court, listening with the same attention to all parties at the trial and their representatives.

他在法庭創造一種安寧的氣氛，並以同等關注傾聽審判中的各方與其代理人。

He conducts himself in a way which is respectful of the administrative staff, and of their autonomous sphere of duty and competence.

他自我行事尊重行政人員及其義務與職權的自主範圍。

He maintains relations with colleagues which are both proper and respectful of their autonomy and independence.

他與同僚保持適宜且尊重其獨立及自主之關係。

The judge, individually or collectively or in the performance of his managerial duties, ensures that the values of respect and listening are shared and respected by all.

法官於個別或集體或履行其管理職責時，應確保尊重和傾聽的價值能為所有人共享與遵守。

7. EQUALITY OF TREATMENT 平等待遇

Equality of treatment requires the judge to give everyone that to which he is entitled, both in the process and in the result of any case, through recognising the uniqueness of each individual.

平等待遇需要法官藉由認知每個人的獨特性，賦予每個人在任何案件的過程及結果中所應享有的。

The judge has consideration for all persons who appear before him and makes sure to treat them equally.

法官應考慮所有出庭者，並確保平等地對待他們。

He is aware of the objective differences between different categories of people and works to ensure that each party is heard, understood and respected.

他應認知不同族群間的客觀差異，並努力確保各方意見均被傾聽、理解和尊重。

He ensures that nobody can say that he has been ignored, or patronised, or despised.

他應確保沒有人會宣稱被忽視、被溺愛或被輕視。

When the Constitution, national laws or international rules provide for it, a judge may apply positive discrimination; in other cases he ensures that equality of treatment prevails.

在憲法、法律或國際規約規定下，法官可以適用積極性的差別待遇，其他案件則應確保優先適用平等待遇。

8. COMPETENCE 適任

Society is entitled to a competent judge with a broad professional ability.

社會有權享有具廣泛專業能力的適任法官。

The judge adapts quickly to new developments.

法官應迅速地適應新的發展。

A judge has a methodical approach to his work. He takes into account the particularities of each case, including new and unknown aspects and manages the case within an appropriate time.

法官應以有條理的方法處理工作。他考慮到每個案件的特點，包括新穎及未知的層面，並在適當時間內管理案件。

A judge also uses persuasiveness, where it is appropriate, to resolve conflicts.

法官也可以在適當情況下使用說服力解決衝突。

A judge is part of a working community; He is able to work in teams with colleagues and staff members.

法官是工作團隊的一份子；他能與同僚和工作成員團隊合作。

9. TRANSPARENCY 透明度

Information on the functioning of justice and the presence of the public at judicial proceedings contribute to their social acceptance. Equal access of individuals involved in claims or defence to civil and criminal proceedings promotes transparency and enhances public confidence.

司法運作及公眾參與司法程序等資訊，有助於獲得社會認可。個人平等參與其所涉民事及刑事訴訟程序之主張或抗辯，能提升透明度並增加公眾信心。

The judge sees to it that the public are given information on the functioning of justice.

法官務必注意公眾能獲得關於司法運作之資訊。

He ensures transparency through public hearings and by giving reasons for his decisions while maintaining the confidentiality required to respect privacy or because of the need for public order.

他透過公開聽證及提供判決理由確保透明度，但因尊重隱私或公共秩序需要而保守秘密。

He maintains a careful balance between the need for transparency and the prohibition of voyeurism or exhibitionism so as to ensure that justice does not become a spectacle.

他在透明度需求及窺伺狂或表現癖之間保持審慎的平衡，確保司法不會出醜。

In media relations, institutional information must prevail. Information on individual cases can be given only within the legal framework.

在與媒體的關係中，官方資訊必須優先。個案資訊只能在法律架構內提供。

In his private life and in society, the judge is always vigilant to avoid any conflict of interest. By doing so, he ensures transparency regarding his impartiality.

在私人生活及社會中，法官經常保持警覺避免任何利益衝突。藉此確保關於公正性之透明度。

PART II – THE QUALITIES OR VIRTUES OF A JUDGE法官的特質或美德

The complexity of the act of judging, beyond the singularities determined by the history of each country, means that many virtues or qualities must be combined so that justice can be done.

審判行為之複雜性，除了其特點取決於各國歷史以外，意味著許多美德或特質必須結合始能實現正義。

Confidence in justice is not only guaranteed by an independent, impartial, honest, competent and diligent judge.

司法的信任不能只是由一個獨立、公正、誠實、有能力及勤勉的法官而保證。

A judge should perform his role with wisdom, loyalty, humanity, courage, seriousness and prudence, while having the capacity to listen, communicate and work.

法官應以智慧、忠誠、人性、勇氣、嚴肅及謹慎來履行自己的職責，同時具備傾聽、溝通和工作的能力。

These requirements are not specific to the judge but they are essential to guarantee the right of everyone to have a judge.

這些要件對法官並非特有的，但係確保人人有權要求法官所必要。

1. WISDOM 智慧

Through his knowledge of the realities and of the law, and by his reasonable, fair and prudent behaviour, a judge shows his wisdom.

法官藉由對事實和法律的認知，以及他合理、公平與謹慎的行為而展現其智慧。

By behaving in this way, he removes excess and extravagance in the exercise of his functions while at the same time not showing signs of timidity or paralysis that would lead to conformity. He is creative in applying the law to determine cases, including those which are not settled by existing law. Since law does not evolve at the same pace as society does, he shows wisdom in using techniques of interpretation.

（文轉三版）

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透過這樣的行為，他消除行使職權時的恣意與放縱，同時並未顯示膽怯或麻痺，以達成一致性。他適用法律來決定案件時具有創造力，包括那些沒有被現有法律規範的案件。由於法律未與社會同步演化，他展現出使用解釋技巧的智慧。

This virtue enables him to be calm and prudent when dealing with disputes, and allows him to discern and distance himself from the parties and the facts that he judges.

這種美德使他在處理紛爭時得以保持冷靜和謹慎，並使他能辨別且與他所審判的當事人及事實保持遠距。

2. LOYALTY 忠誠

A judge is loyal.

法官是忠誠的。

This loyalty, together with independence, means that when the judge takes an oath, whatever its formula, this symbolic promise of loyalty binds him to the rule of law in the State.

這種忠誠以及獨立，表示當法官宣誓時，無論其形式如何，這種象徵性的忠誠承諾將他與國家法治相互聯繫。

In Europe, this commitment involves loyalty to the Constitution of each country, to its democratic institutions, to fundamental rights, to law and to procedure, and finally to the rules of the organisation of the judicial system.

在歐洲，此項承諾涉及對於各國憲法、民主體制、基本權利、法律和程序及最終，司法系統組織規則的忠誠。

A judge loyally meets two requirements: not to exceed the powers entrusted in him and to exercise them.

法官忠實地滿足兩項要求：不踰越賦予他的權力並且行使。

This loyalty cannot be demanded of a judge when democracy and fundamental freedoms are in peril.

當民主和基本自由陷於危險時，無法要求法官這樣的忠誠。

In countries which allow a judge to be a member of a political party or to be a candidate in political elections, national rules on incompatibilities can regulate political expression and candidature in order to ensure that everyone has access to an independent and impartial judge.

在允許法官成為政黨成員或成為政治選舉候選人的國家，關於不適任的國家規則可以規範政治表達和候選人資格，以確保人人都能獲得獨立和公正的法官。

3. HUMANITY 人性

A judge's sense of humanity is manifested by his respect for persons and their dignity in all circumstances of his professional and private life.

法官的人性意識表現於專業和私人生活的所有情況下，對人們及其尊嚴的尊重。

His conduct is based on respect for human beings having regard to the totality of their characteristics whether physical, cultural, intellectual, or social, as well as the race and gender of the person.

他的行為是基於尊重人及其全部特點，無論身體的、文化的、智力的或社會的，以及種族及性別。

A judge shows respect in dealing not only with the people whom he judges but also with those who are part of his working environment such as lawyers, administrative staff etc.

法官不僅尊重裁判的對象，也尊重工作環境中的部分，例如律師、行政人員等。

This humanity, which encompasses a sensitivity to situations he faces, enables him to take into account the human dimension in his decisions. In his assessment of facts and decisions he finds a measure between empathy, compassion, kindness, discipline and severity, so that his application of law is perceived as legitimate and fair.

這樣的人性，包括對他所面臨情況的敏感，使他能在他的決定中考慮人的因素。在他對事實的評價和決定中，他發現在同情、憐憫、仁慈、紀律和嚴厲間的衡量，所以他的法律適用被認為是正當的和公平的。

4. COURAGE 勇氣

A judge shows courage in order to execute his duties as a judge and to respond to those seeking justice.

法官展現勇氣而執行擔任法官的義務，並且回應尋求正義的人。

This courage combined with independence can also lead to unpopularity and loneliness.

此種勇氣與獨立結合，也會導致不受歡迎和孤獨。

The evolution of contemporary society means that the judge must show courage, both physical and moral:

當代社會的演化表示法官必須展現行為面與道德面的勇氣：

• in order to conduct certain procedures,

• 為了執行某些程序，

• to cope with various pressures, political, social, and of public opinion, as well as from the media and vested interests.

• 對抗政治的、社會的、輿論的以及媒體和既得利益者的各種壓力。

• to meet the challenges of modern society.

• 面對現代社會的挑戰

This virtue, like all other qualities, is exercised in a reasonable manner.

這種美德與所有其他特質相同，是以合理的方式行使。

5. SERIOUSNESS AND PRUDENCE 嚴肅和謹慎

The essence of the seriousness and prudence of a judge consists in his behaving appropriately.

法官嚴肅和謹慎的要素在於行為舉止合宜。

Seriousness requires behaving respectfully during legal proceedings, being courteous, without excessive solemnity, and without inappropriate humour. However, maintaining a professional practice of prudence does not exempt from the practice of humanity which governs the relationships of any community.

嚴肅性要求在法律程序中行為恭敬、有禮，沒有過度嚴肅及不適當的幽默。然而，保持專業的謹慎習慣並未免除人性實踐，因其管理任何社會的關係。

A prudent judge combines his knowledge of the law and of the particular circumstances of the case in a reasoned way while maintaining his practical common sense.

一位謹慎的法官會以合理的方式結合他對法律和案件特殊情況的知識，而保持其務實的常識。

Prudence guides the judge in both his professional and private lives in order to maintain public confidence in the judiciary and the courts.

謹慎引導法官的專業及私人生活，以維護公眾對司法和法院的信心。

6. WORK 工作

Judicial office involves sustained hard work and persistent intellectual effort.

司法職務需要持續的努力工作和不懈的思考成果。

The judge's capacity for work and his determination to use this capacity are needed both to develop his judicial skills and to maintain the high quality of work that a litigant is entitled to expect from him.

法官的工作能力和使用這種能力的決心，既要發展其司法職能，也要維持當事人對其工作高品質的期待。

Thus a judge organises his work efficiently. He demonstrates self discipline in coping with stress and frustration. If he works in team, he pays attention to the views of his colleagues and cultivates the skills of teamwork.

因此，法官應有效率地規劃其工作。在面對壓力和挫折時表現自律。如係團隊工作，即應關注同僚的意見及培養團隊合作的技能。

Finally, a judge involved in the management of the court develops his management skills.

最後，法官參與法院管理而發展其管理技巧。

7. LISTENING AND COMMUNICATION 傾聽和溝通

The judge is expected to listen carefully to the parties at all stages of the proceedings.

法官被期待在訴訟的所有階段仔細聽取各方意見。

Listening implies absence of bias and of prejudice. This quality implies not only real open-mindedness and receptiveness but also the ability to call into question oneself. This listening remains neutral, distant but without being condescending or scornful, humane but dispassionate.

傾聽意味沒有偏見和預斷。此種特質不僅意味著真正的心胸開放和接納，也意味著有能力自我反省。這種傾聽應保持中立、遠距但不傲慢或輕蔑、仁慈但冷靜。

Listening skills and attention to others are not innate qualities; they are something which can be worked on and which are part of the training of judges.

傾聽技巧和對他人的關注並非天賦的特質；它們是可以努力的，也是法官訓練的一部分。

A judge ensures that he is able to communicate with others. He expresses himself in a measured way, with respect, in a non-discriminatory manner and with serenity. He refrains from using expressions which are ambiguous, disrespectful, condescending, ironic, humiliating or hurtful.

法官應確保能與他人溝通。他應斟酌自己表達的方式，即具備尊重、不歧視的態度和平靜。避免使用模棱兩可、無禮、傲慢、諷刺、羞辱或傷人的表達。

Good communication is also present in his judgments (written or oral). A judge ensures that his judgments are intelligible. He gives reasons for his decision so that everyone involved can understand the logic on which the judge based his decision.

良好的溝通也顯現於其裁判（書面或口頭）。法官應確保他的裁判是可以理解的。為他的決定提供理由，所以相關人等能理解法官決定的邏輯。

WEEKLY 周刊 歡迎 高 各 事
本刊歡迎兼顧理論與實務、法學新知的作品。文長宜在八千字以內，並以利參考。
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