

Newsletter n° 18/2011

New Observer

Questionnaire on transparency about judges? property and additional assignments, functions and professions. Summary of answers received.

Editorial

President Griss

At its last General Assembly which was held in Sofia on 13 October 2011, President András Baka of the Supreme Court of Hungary was elected President of the Network for the coming two years. It was a pleasure for me to serve as president of our Network since the Colloquium which took place in Dublin in March 2010. I am indebted to all my Colleagues for their assistance. During my term in office, we decided to meet more often and especially with the Court of Justice of the European Union. I hope that this new development in our cooperation will strengthen in the future.

New Observer

Ms Vesna Medecina, President of the Supreme Court of Montenegro, has been admitted as observer by the General Assembly held in Sofia on 13 October 2011.

Questionnaire on transparency about judges? property and additional assignments, functions and professions. Summary of answers received.

Number of replies: 20

Countries which replied to the questionnaire: Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, and United Kingdom.

[No reply received: Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Romania, Spain, and Sweden]

I. Duty of judges to periodically declare the additional assignments, functions and professions they are involved in

1. Do judges have a legal or ethical duty to periodically declare a list of the additional assignments, functions and professions they are involved in?

Only in Denmark do judges have a legal (statutory) duty to periodically declare the additional assignments, functions and professions they are involved in. The reports of Czech Republic, Ireland, Latvia, Luxembourg, Portugal, Slovakia

and United Kingdom stated that judges are not obliged to declare such additional assignments, functions and professions. Although judges in the vast majority of countries are not obliged to make a periodical declaration *stricto sensu*, the replies of 12 countries state that judges are nevertheless obliged to declare additional professions they are involved in or plan to be involved in beforehand or immediately upon becoming involved in another profession, some of which require authorisation, others merely notification. This is so in Austria, Belgium, France, Germany, Hungary, Italy, Norway, Poland, Slovenia, Malta, Netherlands, and, as already pointed out, in Lithuania. In general, judges in these countries have a *statutory* duty (Code of Ethics in Malta) to declare their additional assignments, functions or professions. In Slovakia, magistrates have a duty to declare annually that they do not occupy a profession incompatible with the status of a judge and what advantages they have from the activities and functions they are allowed to engage in.

2. Which additional assignments, functions and professions are judges obliged to declare?

In several countries, judges are obliged to declare (or request authorisation for) any revenue-generating assignments they perform or intend to perform alongside their main employment. This is the case in Austria, Belgium, Denmark, Germany and Slovenia. The reports of France, Lithuania, Malta, Netherlands, Poland, Norway and Slovenia explicitly refer to broader criteria that are not simply related to remuneration, to determine which assignments the judges should declare.

3. To whom must judges declare their additional assignments, functions and professions? Is the legislative or executive branch of government involved in this procedure?

In eight countries, namely, Denmark, France, Germany, Hungary, Malta, Netherlands, Poland and Slovenia, judges must submit a declaration to their superiors.

In four countries, *viz.* Italy, Lithuania, Norway and Slovakia, the declaration has to be made to an independent body. In another four countries, *i.e.* Austria, Belgium, Germany, Poland and Slovenia, the executive branch of government is involved in the procedure to a certain extent. In only one country, Lithuania, is the legislative branch of government involved in the procedure.

4. Is the duty to declare additional assignments, functions and professions imposed on ordinary judges as well as on those who are members of the Public Prosecutor's Office?

The duty to submit a declaration in Denmark and Norway applies only to judges and not to public prosecutors. As far as reported, in 9 countries the same or a similar duty of declaration applies to ordinary judges as well as to public prosecutors. This is the case in Austria, Belgium, France, Germany, Hungary, Lithuania, Netherlands, Poland and Slovenia.

5. Is the duty to declare additional assignments, functions and professions only imposed on judges of the judiciary or is it also imposed on judges of the Constitutional Court or high administrative courts?

In nine countries (Austria, Belgium, France, Germany, Hungary, Lithuania, Malta, Netherlands, Poland), the same or similar rules apply to the administrative courts and/ or to the Constitutional Court.

6. How and when must judges declare their additional assignments, functions and professions and what details must that declaration contain?

Only in Denmark are judges obliged to declare their additional assignments, functions or professions annually. Elsewhere, judges must declare their additional assignments, functions and/or professions before or immediately after becoming involved in them.

7. What sanctions can be taken against a judge who fails to comply with his or her duty to make a declaration that is accurate, complete and duly submitted?

Only Lithuania has specific sanctions that can be taken against judges failing to comply with their duty to make an accurate and timely declaration. Lithuania is the only country with specific sanctions. In all other countries the general provisions regarding disciplinary measures apply.

8. To which body can disputes about the duty to make a declaration or its accuracy be submitted?

With the exception of Netherlands where no special body exists for this, 10 Supreme Courts (Austria, Belgium, Denmark, Germany, Hungary, Lithuania, Malta, Norway, Poland, Slovenia) indicated a specific body (administrative courts, specific Board or Committee).

9. How and by whom is the declaration kept?

In six countries (Germany, Hungary, Malta, Netherlands, Poland, Slovenia) the declarations are kept by the respective (highest) court or the office of the Public Prosecutor concerned. Four countries (Austria, Denmark, Lithuania, Norway) stated that the declarations are kept by another body or institution.

10. How long is the declaration kept and in what circumstances can it be destroyed or returned to the judge having submitted it?

Declarations are destroyed when a judge leaves office (Austria, Norway) or after a specific number of years (Hungary, Lithuania, Norway, Poland, Slovenia). Other Supreme Courts (Germany, Netherlands) stated that the applicable rules are those applying to judges' personal files.

11. Does the public have access to the lists of assignments, functions and professions? Are the lists officially published?

The data are open to the public and (partly) available on the internet in four countries, i.e. Denmark, Lithuania, Netherlands and Norway. In six countries the public has no access to the data relating to additional professions, functions or assignments. And the lists of assignments, functions and professions are also not published in Austria, Germany, Hungary, Malta, Poland and Slovenia.

12. Apart from judges, do other members of the judiciary have a legal or ethical duty to submit a list of additional assignments, functions and professions they are involved in? If so, which members are subject to this duty and do the same rules apply as for judges?

In Denmark, Malta, Norway and Poland, the duty to declare additional assignments, functions and professions does not apply to other members of the judiciary apart from judges. Besides judges, other members of the judiciary have the same or a similar duty of declaration in Austria, Belgium, France, Germany, Hungary, Lithuania, Netherlands, Slovakia and Slovenia.

II. Duty of judges to periodically declare their property assets

13. Do judges have a legal or ethical duty to periodically declare their property assets?

Judges in 12 countries do not have a legal or ethical duty to periodically declare their property assets. There is no such duty in Austria, Belgium, Czech Republic, Denmark, France, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal and United Kingdom. There were draft laws seeking to introduce this duty in the Czech Republic, but judges were ultimately excluded from the scope of application of the General Act. The Supreme Court is against the introduction of such a duty for judges, since the requirement to protect the authority and impartiality of judicial power protects judges against duties which could, under certain circumstances, make judges subject to speculation, threaten their security or even lead to situations where they could be blackmailed. Moreover, such a duty would conflict with the special role of

judges as guarantors of the values of the democratic state order (with reference to ECHR, 26 April 1995, Prager and Oberschlick v. Austria). Judges are legally (statutorily) required to regularly declare their property assets in seven countries: Hungary, Latvia, Lithuania, Norway, Poland, Slovakia and Slovenia.

14. Which items of their property assets must judges declare?

Seven Supreme Courts (Hungary, Latvia, Lithuania, Norway, Poland, Slovakia, Slovenia) detailed the items which must be declared (real estate, shares, savings in excess of a particular amount).

15. To whom must judges declare their property assets? Is the legislative or executive branch of government involved in this procedure?

Since judges must declare their assets to an independent body in Norway and in Slovenia and to the Head of the Public Prosecutor's Office in Slovakia, neither the executive nor the legislative branch of government is involved in the procedure there. In other countries (Hungary, Latvia, Lithuania and Poland), the legislative or the executive branch of government is also (to a certain extent) involved in the procedure.

16. Is this duty to declare property assets imposed on ordinary judges as well as on members of the Public Prosecutor's Office?

The same or similar rules apply to ordinary judges as to members of the Public Prosecutor's Office in Latvia, Lithuania, Poland, Slovakia, Slovenia and, to a certain extent, in Hungary. In Norway, the duty to declare only applies to judges.

17. Is this duty to declare property assets only imposed on ordinary judges or is it also imposed on judges of the Constitutional Court or high administrative courts?

Six Supreme Courts (Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia) stated that the same or similar rules apply to the administrative courts and/or to the Constitutional Court.

18. How and when must judges declare their property assets and what details must such a declaration contain?

Seven Supreme Courts (Hungary, Latvia, Lithuania, Norway, Poland, Slovakia, Slovenia) gave information on the filing of the initial statement prior to the first appointment as well as on updating the declaration.

19. What sanctions can be taken against a judge failing to comply with his or her duty to make a declaration of property assets that is accurate, complete and duly submitted?

The reports of Hungary, Slovakia and Slovenia underline that judges failing to comply with this duty may be relieved of office. In the other four countries (Latvia, Lithuania, Norway, Poland) judges may be subject to disciplinary, administrative or criminal sanctions.

20. To which body can disputes about the duty to declare property assets or the accuracy of the declaration be submitted?

In Hungary, Latvia, Lithuania, Norway, Poland, Slovakia and Slovenia, disputes concerning the duty to declare property assets or about the accuracy of the declaration are decided by the competent court or by the judicial authorities (Supervisory Committee for Judges, National Council of Justice). In Latvia, disagreements about the inaccuracy of the information provided are to be discussed with State Revenue Service Officials

21. How and by whom is the declaration of property assets kept?

In the same seven countries as in para. 20 above, the declarations are kept by judicial authorities (Council of Justice, Court Administration) or by tax authorities.

22. How long is the declaration of property assets kept and in what circumstances can it be destroyed or returned to the judge having made the declaration?

The Supreme Courts of the same seven countries stated that declarations are kept for a number of years (ranging from three in Norway to 50 in Latvia) and are then destroyed or returned when the judge concerned leaves office.

23. Is the declaration of property assets confidential? Who is entitled to consult it and in what circumstances? Can the declaration of property assets be used in connection with a criminal or disciplinary investigation?

In five countries i.e. Hungary, Latvia, Lithuania, Norway and Slovenia, financial data are (to a certain extent) open to the public. Financial data are confidential in Poland, Slovakia and for most judges in Hungary.

24. Do other members of the judiciary, besides judges, have a legal or ethical duty to declare their property assets? If so, which members are subject to this duty and do the same rules apply as for judges?

In two countries, Norway and Latvia, this duty does not apply to other members of the judiciary besides judges. In Hungary, Lithuania, Poland, Slovakia and Slovenia, this duty is imposed on other members of the judiciary too.

Attached file:

[Newsletter n° 18/2011.pdf](#)^[1]

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