

Ethical conduct of lay judges

A draught for discussion purposes, by Ulla Sens and Hasso Lieber

The ethical conduct of lay judges rests on two supporting pillars: the concept of the judge as embodied in the German basic law (*Grundgesetz; GG*) and that of responsibility in the exercise of the power of the state in honorary civic office. The office of lay judge provides its holder with the power to intervene in the rights of others and shape these rights. This results in principles that inform the conduct of lay judges, sharpen consciousness concerning the responsibility embodied in their office and enable its occupants to reflect self-critically with regard to their conduct and decisions. These requirements apply to all lay judges, regardless whether they are selected respectively appointed as representatives of the general public (the people) or a specific group, or due to their particular expertise.

Ethical conduct is a permanent task, that manifests itself in a striving for a fair and just decision in a given case. The willingness to weigh up divergent modes of conduct, claims and legal positions against one another involves one's entire personality and does not end when one leaves the law court.

I. Social competence

The exercise of honorary civic office calls for social competence, which encompasses the totality of one's abilities and techniques for communicating with people, comprehending their actions and motivations and adequately assessing their individual modes of conduct. It is expected of lay judges that they will always act and decide in a differentiated situation-appropriate manner.

II. Respect

The work of lay judges calls for respect for the procedural participants, humility before the power vested in them by their office, respect for human dignity and the principle of equality before the law, and tolerance for other beliefs, convictions, cultures and ways of life. Within and without the courtroom, lay judges always maintain the requisite restraint.

III. Communication culture, ability to work in a team

Lay judges have communication skills and an ability to enter into dialogue. They make clear what they mean, interact with the procedural participants and take part in deliberations, assuming an argumentative role and presenting their standpoint while also remaining receptive to better arguments. Lay judges are guarantors of the principle of the multi-judge court. They know the extent and limits of their participatory competence. This calls for the ability to work in a team in a manner characterised by openness, collegiality and solidarity. They discuss and decide concerning divergent views on an equal footing while always maintaining mutual respect.

IV. Independence

Constitutionally guaranteed factual independence (Art. 97 §1 GG) protects lay judges from external influencing by procedural participants, published opinions and expectations, and group pressure, as well as from inadmissible influencing from within the judges' panel. Their decision is not subject to any directives. Crucial in this regard is the inner independence that enables them to liberate themselves from all expectations and directives and resolutely oppose any external attempts at influencing them. As lay judges are neither promoted nor assessed, their independence has the effect of intensifying the administration of justice overall.

V. Rule of law

All judges are equally bound to law and statute. The professional judges' knowledge of the law does not result in an authority gradient among the members of the judges' panel. With their concept of justice, life experience and professional experience, as well as their logical reasoning skills and insight into human nature, lay judges contribute to the adjudication of legal disputes and to legal order.

VI. Secrecy

Lay judges are required to preserve the secrecy of the deliberations of the court. This is intended to protect the court. This secrecy extends to the course of deliberations and the results of votes and is to be construed narrowly. The benchmark for the duty of secrecy is the protection of personal rights, as well as the interests of both companies and the state in preserving confidential information.

VII. Unbiasedness

The essential characteristic of the work of judges is that the court proceeds and decides without distinction of person, impartially, neutrally and free of preconceptions. Lay judges may not allow themselves to be guided by extraneous considerations or by sympathies or antipathies. Objective circumstances which can serve as grounds for a suspicion of partiality – such as personal relationships or conflicts of interest – are disclosed in a timely manner. A premature commitment to the outcome of a legal dispute is avoided. In conflict-laden situations, lay judges control their emotions and do not allow themselves to be carried away into reacting rashly or making rash statements. As regards their outer appearance, they avoid political, ideology-based or religious symbols or comparable attributes which could lead to doubts as to their objectivity.

VIII. Fair procedure, sense of justice

Lay judges are bound by the principle of the constitutional state. The elements of this principle, e.g., due process of law, legally competent judges, respect for fundamental rights, especially equal treatment under law, as well as the proportionality of means, can be subsumed under the term: 'fair procedure'. Procedural questions can be answered under the aspect, "Is that fair?", substantive-law questions (on the merits) under the aspect, "Is the decision just?"

The office of lay judge requires one to think in categories of justness. Lay judges must also participate in decisions on questions of law, to be sure, not in terms of jurisprudential systematics, but with the means of a person who thinks reasonably and fairly. They contribute to the transparency, comprehensibility and plausibility of the proceedings and, as a result, to the acceptance of the decisions rendered. This applies in particular where the object of the proceedings is a settlement or mutual agreement. They must, through the assertion of their rights of participation, thwart any informal settlement.

IX. Sense of responsibility, courage to decide

Through their participation on an equal footing, lay judges fully share responsibility for the decisions of the court.

Lay judges make a contribution toward speedy proceedings and communicate in a timely manner grounds for a prevention or unconscionability of participation, statutory exclusion or suspicion of partiality. Their duty of participation encompasses active participation in proceedings and deliberations with the professional members of the panel. Through their personal integrity and appropriate conduct within and without their office, lay judges, as representatives of the constitutional state, promote trust in the administration of justice. Supporting free and democratic fundamental order and the constitutional state are self-evident prerequisites for the exercise of the office of lay judge.

Intervening in the living situation and rights of others calls for courage to assert one's own opinion and a sense of responsibility for the consequences of decisions. Lay judges exhaust all available sources of information for their decisions, listen with impartiality to all parties to the proceedings and carefully evaluate all evidence, based on their own convictions. They allow themselves only to be guided by the power of the arguments, not by the status or social affiliation, of the party in question.

X. Knowledge and further education

Lay judges must, prior to taking on the responsibilities of the office, possess basic expertise concerning participation in the respective jurisdiction. To the extent that assuming the office is contingent on special legal prerequisites with regard to expertise, aptitude and abilities, the relevant nominating, selecting or appointing boards must ensure adherence to these prerequisites. Lay judges have the right and obligation regularly to undergo further education with regard to matters relating to their honorary office.