

## **31th opinion, of 21 March 2024, of the Ibero-American Commission on Judicial Ethics on judges' participation in social and cultural life from an ethical standpoint. Reporting judge: Commissioner Octavio Augusto Tejeiro Duque**

### **I. Introduction**

1. Judges live within society, which means that they have regular interactions with both their colleagues and the general population in multiple and varied contexts. This is not only because their public service requires them to maintain an open and ongoing dialogue with society's various actors but also because they are human beings who live in an environment in which communication and the exchange of goods and services are part of people's daily lives, and this requires an ongoing relationship between them. These circumstances are so much part of the daily course of existence in today's world that it is practically inconceivable to think of a person alienated from the rest of society.
2. This approach is useful since it is founded on the idea that, as people, judges are always in contact with the outside world and they must therefore act accordingly. In view of such a scenario, it begs the question: *how should a judge behave in social and cultural life from an ethical standpoint if the principle of independence is to be effectively adhered to?* The inescapable basis for the above is that the dignity represented and embodied in every officer of the court - from the moment they are vested with authority and make their sworn commitment to enforcing the constitution and the law - does not exclude them from the public life to which they are constantly linked by various factors, but fundamentally by their belonging to the social group with which they permanently and necessarily interact. At the same time, in fulfilling their duties, judges must always act impartially and independently, since these two elements project the *'basic and essential nature of the judiciary'*<sup>1</sup>. In this respect, according to Taruffo, *'it is necessary to ensure that a judge is not exposed to undue influence or external conditions aimed at guiding their behaviour in the sense of favouring one or other of the parties in proceedings or protecting interests external to the process or - more generally - to the administration of justice'*<sup>2</sup>. This last is most important, given that *'independence must be understood, above all, with respect to the other two powers of the state which, of*

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<sup>1</sup> Pérez-Cruz Martín, Agustín J. and Suárez Robledano, José M. *Independencia Judicial y Consejos de la Judicatura y Magistratura [Judicial Independence and Guidelines for the Judiciary]*. Atelier Libros Jurídicos. Barcelona, 2015, p. 59.

<sup>2</sup> Taruffo, Michele. 'Consideraciones generales sobre la independencia de los jueces' [General Consideration on Judges' Independence], in Jordi Nieva Fenoll y Eduardo Oteiza (eds.), *La independencia judicial: un constante asedio*. Marcial Pons. Madrid, 2019, p. 17.

course, have contact with the judiciary and, as we have said, according to MONTESQUIEU, involve a certain degree of reciprocal control<sup>3</sup>.

3. A judge, essentially, personifies the dignity of justice. This requires them to possess the knowledge, skills and qualities necessary to carry out their institutional work with dignity, consideration and intellectual honesty. In addition to this, they also need superior ethical and human qualities which distinguish them and which can be seen not only in how they deliver justice and how they relate to their colleagues and other participants but also, and more prevalently, when they step outside of the courtroom and come into contact with the outside world to which they belong by the simple fact of being a person, especially because this human condition makes it inevitable that they see, feel, value and judge - from a human and rational perspective - everything that happens around them.
4. Every judge must exercise their profession with passion, but above all with dignity, good sense, modesty and restraint. For this reason, when referring to the external aspect, from material, symbolic and formal perspectives, Ossorio suggests that *'it is important to understand that a judge's gown, like all professional attributes, has two meanings for those who wear it - restraint and illusion - and two different meanings for who see it - differentiation and respect'*<sup>4</sup>. This characterisation shows that anyone who dons and acts under such an important insignia must behave in a manner that is blameless and adapted to the parameters of ethics and morality which is expected of any servant of justice, without this entailing that they have two personalities or separate themselves from the rest of society. What the state, and society in general, expects is that those who perform judicial functions maintain a careful equilibrium, sufficient to balance their development as a person with their judicial work. This must be such that their behaviour fully harmonises with the ethical and moral requirements that distinguish a good judge and with all the general expectations of human beings in their family environments and in any other area of life, without this involving bias toward or against a specific social, cultural or, worse, judicial cause, given that *'judicial independence is an absolutely essential element in people's right to access an institutional system that judges neutrally, in accordance with the requirements of a pre-existing rule. A system, therefore, that has the stability to ensure citizens' rights within a legal framework'*<sup>5</sup>.
5. Although judges are members of the society in which they live, they are prohibited from allowing or taking part in any external or internal interference that might cloud or affect their good judgment or encourage particular causes or interests related to the outcome,

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<sup>3</sup> Véscovi, Enrique. *Teoría General del Proceso [General Theory of the Process]*. Editorial Temis. Bogotá D.C. 1984, p. 133.

<sup>4</sup> Ossorio, Ángel. *El alma de la Toga. Elogio del Abogado [The Spirit of the Gown: In Praise of Lawyers]*. Editorial Leyer. Bogotá D.C. 2005, p. 148.

<sup>5</sup> García-Sayán Larrabure, Diego (United Nations Special Rapporteur on the independence of judges and lawyers). *Equilibrios, continuidades y autonomías. Retos de la práctica democrática en México [Balance, Continuity and Autonomy: Challenges of Democratic Practice in Mexico]*. Available at <https://archivos.juridicas.unam.mx/www/bjv/libros/12/5966/5.pdf> (accessed 5 February 2024).

meaning or scope of a given court decision; if this were not the case, it would entail imposing conditions and restrictions capable of eradicating their independence. This standard of behaviour presupposes *'the absence of undue interference in the work of administering justice from the executive and legislative branches, parties to a process, social actors or other bodies linked to the administration of justice'*<sup>6</sup>. In this respect, Taruffo notes, *'essentially, judges must be independent in order to be impartial in the exercise of their powers, and their independence is a necessary condition of impartiality'*. This is important and serves to *'distinguish between initial independence, which derives from the moment of a judge's selection and appointment, and the independence that might be called continuous, since it is guaranteed for the entire time in which a judge performs their functions'*<sup>7</sup>. When a judge allows others to intervene or interfere in their decisions, they are automatically neutralised. In this respect, Larenz notes that *'the guarantee of impartiality therefore requires judicial independence, in the sense of not being linked to the suggestions or instructions of other state bodies with regard to their judicial activities'*<sup>8</sup>.

6. This approach aligns with the Bangalore Principles of Judicial Conduct, which state that *'A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom'*<sup>9</sup>. In this respect, judicial ethics becomes a practical art, inevitably linked to virtue, whereby it is not enough simply to be able to discern between good and bad, but it is necessary to choose the former, which entails identifying good and bad habits in order to cast off the bad and strengthen the good. A judge decides a case on the basis of the law, and *'law without an ethical reference loses legitimacy and ultimately plausibility and social effectiveness'*<sup>10</sup>, and this is all in the interest of preserving the principle of judicial independence, since *'in contrast to the obvious and accepted offices presided over by the actions of the other organs of the state, judges' independence appears, effectively, to be an anomaly that needs to be explained. Nevertheless, from a purely normative standpoint, that is, if the structure of the system and its operational mechanisms are analysed from a logical point of view, it seems that what constitutes the real anomaly is not so much judges' disassociation from certain offices but rather the maintenance of these with respect to the ordering of the action of other bodies'*<sup>11</sup>.

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<sup>6</sup> Burgos Silva, Germán. *Independencia Judicial en América Latina [Judicial Independence in Latin America]*. Ediciones Anthropos. Bogotá, 2003, p. 13.

<sup>7</sup> Taruffo, Michele, *op. cit.*, p. 14.

<sup>8</sup> Larenz, Karl. *Derecho Justo. Fundamentos de ética jurídica [Fair Law: Foundations of Judicial Ethics]*. Editorial Civitas S.A. 1ª edición. Madrid, 1985, p. 181.

<sup>9</sup> *The Bangalore Principles on Judicial Conduct*. United Nations. Vienna. 2018.

<sup>10</sup> Hortal Alonso, Augusto. 'La independencia del juez y la esfera de la justicia' [Judges' Independence and the Judicial Sphere], in Miguel Grande Yáñez (coord.), *Independencia judicial: problemática ética*. Dykinson S.L. Madrid, 2010, p. 40.

<sup>11</sup> Requejo Pagés, Juan Luis. *Jurisdicción e independencia judicial [Jurisdiction and Judicial Independence]*. Centro de Estudios Constitucionales. Madrid, 1989, p.125.

7. No one would hesitate to say that contemporary democracies make it possible for society to participate in common decision-making, which is one of the essential foundations on which these political systems are built. This is particularly relevant because, as a general rule, anyone who serves as a judge may participate in certain decisions in public life, particularly in matters of a social and cultural nature. There is nothing wrong with this *per se*. What is important - and this is fundamental - is that this participation takes place within the context provided for by the legal system to ensure that citizens are actively involved in decision-making of general interest, which sets additional standards of prudence, rectitude and restraint in the exercise of these freedoms by a person who has been appointed as a judge. For example, a judge, in their role as a citizen, is entitled to actively participate in the process of electing the rulers of their country, but they may not be a member of any political party or movement, nor promote a particular project or join demonstrations or participate in public events in which a certain political ideology is championed, or in which they publicly advocate a specific electoral cause, since all these are prohibited. Consequently, if judges involve themselves in any of these areas, this could imply undue interference that will undermine their independence and give people to think that their work is motivated by a particular political, cultural or social movement or ideology.
8. Judges may build social relationships and participate in social activities, as well as form part of the cultural environment to which they belong. The opposite would mean alienating them from the outside world in which they live, for the simple fact of holding a public office. This could be a serious mistake since it would entail their isolation from their natural environment and risk their becoming asocial and inaccessible.
9. If a judge became involved and, whether directly or indirectly, took sides in social issues that extend beyond their remit, it could foster doubts about their ethical and moral principles, since such interference in some areas, such as in social and cultural contexts, could justify claims of loss of impartiality, autonomy, honesty and independence in administering justice. Perhaps the most serious consideration is that this social impropriety will - to a greater or lesser extent - affect the image of the judicial system whatever the course of action, and, as undue interference, will constitute a starting point from which to question the judge's worthiness for their office and the legitimacy of their judicial work, all of which will fracture legal certainty and jeopardise the institutional judicial apparatus of the state.
10. In this respect, various legal norms have been established over recent decades that provide a reference for judges and offer some basic principles to which they must abide in order to avoid their actions affecting the appearance of the administration of justice. Ultimately, a judge's office and their vow to abide by the constitution and the law requires them to observe certain minimum parameters of conduct that contribute to exalting the name of justice and, above all, legitimising the venerable work entrusted to them by the state. To this end, Article 53 of the Ibero-American Code of Judicial Ethics stipulates that '*[t]he integrity of a judge's conduct beyond the strict scope of judicial*

*activity contributes to well-founded public trust in the judiciary’, while Article 55 complements this premise, stating that ‘[a] judge must be aware that the exercise of judicial functions entails requirements that do not apply to other citizens’.*

11. This opinion aims to emphasise the importance of judges performing their role in a responsible manner and keeping in mind how they should behave in other areas of public life, specifically within the social and cultural context of the society in which they live and work. It also offers recommendations about the need to preserve a worthy, sober and inviolable image that engenders legitimacy in their judicial work and, above all, helps to uphold the neutrality that must distinguish their work in order to project a good image of justice, as the supreme value necessary to maintain legal certainty and social peace.

## **II. Judges’ ethics with respect to the society in which they act**

12. Judicial work involves minimal ethical and moral commitments applicable to those who exercise such a worthy and important task, in administering justice and judging their fellow citizens according to a legal order pre-established by the forces of the state to which they are subject.
13. Yet judges are not figures of stone hidden from those seeking justice; on the contrary, they exist both within the sphere of the judiciary and within the scope of life of every person in the society to which they belong and in which they work. Hence, it is important to emphasise the need for judges to behave, within the various contexts they encounter in life, with the freedom and responsibility allowed of any citizen, but also with the restraint, prudence, tenacity and consideration that distinguish those endowed with the privilege of delivering justice. This allows that their actions and their development in the various circumstances of life can serve as the basis for legitimising their judicial activities and, consequently, enhance the standing of the public service of administering justice, which is one of the pillars on which the rule of law is built, alongside human dignity, legality and the limits and controls on state power exercised by the different public bodies.
14. Although it is inevitable that judges will involve themselves in environments other than the judicial sphere, specifically in social and cultural contexts, this involvement must be limited and controlled in order to avoid undue interference, otherwise this calls into question the separation of powers and delegitimises their work.
15. In this respect, a judge must be clear about what is allowed them by the fact of being a person, as well as what is forbidden, but they must also be aware of the restrictions that apply to them when they swear to uphold the constitution and the law. It is this that will enable them to know for certain how far they may participate in other areas of public life, especially as regards cultural and social issues in which they may have an interest by virtue of being a citizen.

16. If a judge understands the limits imposed on them by the legal system, it can be expected that they will work within the framework of legality and that, in addition to observing the general postulates that require them to be honest, transparent and modest - not only in their decisions but in their way of living - they will behave ethically in all contexts of private and public life. This means that they can be worthy of the respect and admiration of all those with whom they come into contact, regardless of the circumstance, to the extent that there is a clear perception of their autonomy and independence with respect to the duties that have been entrusted to them and that they have sworn to fulfil with decorum, restraint and competence.
17. It is the society to which a judge belongs that ultimately judges them. And this judgment comes about from social scrutiny not only of their decisions but also, and perhaps most importantly, of their actions in and out of the courtroom. This underlines the need for judges to understand their limits in both the private and public spheres, and to act within them, or risk being exposed to accusations that are unworthy of their image and call into question their ethical and moral suitability to administer justice.
18. If a judge works within the constitutional, legal and moral limits, they will have a good reputation, which will serve as an example to others, and will project a positive image of the justice system to which they belong. It is clear that the example to follow is a model or pattern of personal conduct which, after being recognised in any area of private or public life by a reasonable observer, becomes a benchmark or parameter to guide and educate others. Otherwise, however, if a judge unduly interferes in social and cultural matters in the society to which they belong, it will tarnish their name, detract from their decisions and, most seriously, will destroy the trust that the state has conferred on them to represent the justice system.
19. Judges' actions in social and cultural contexts must be guided not only by the general principles of conduct of a good human being but also by the postulates that characterise a good judge. Behaving otherwise will not only cloud their name and personal and professional prestige but will indelibly stain the image of justice, which is reprehensible from every point of view, given that being a judge is a privilege and, moreover, a dignity that has always been reserved for the best of people.

### **III. Judges' ethics in their interactions in the social and cultural spheres of contemporary society**

20. When the Ibero-American Code of Judicial Ethics warns that *'[t]he integrity of a judge's conduct beyond the strict scope of judicial activity contributes to well-founded public trust in the judiciary'* (Article 53), it does so to highlight the judge's central role in the society in which they act and in awareness of the daily challenges to which they are exposed. A judge does not exist outside public life; their participation in it is inevitable. The crux of the matter is to understand the limits of activity outside the judicial environment and thus avoid any excesses that might affect their standing and ultimately

erode the image of the public service of administering justice, which is why the Code states in Article 55 that '*[a] judge must be aware that the exercise of judicial functions entails requirements that do not apply to other citizens*'.

21. Consequently, while a judge may unquestionably participate in the social and cultural life of the society around them, the truth is that their actions in either of these areas must remain within the framework of the constitutional and legal restrictions imposed by the legal order. This will guide them and help them avoid any deviations that might call into question their judicial independence or autonomy and, over time, delegitimise their work and cloud the dignity of justice.
22. In this context, it is reasonable that there should be limits and restrictions that delimit a judge's power and guide their conduct in the various contexts of life. To this end, the legal systems of every country have established and categorised various situations with respect to which they seek to establish the bases that must guide judges' conduct as servants of justice. The system of impediments, challenges, ineligibilities and incompatibilities with certain functions, as mechanisms that establish restrictions on judges' activities, not only with respect to the exercise of their judicial duties but also other aspects of their activities in society, does not mean that they are forbidden to participate in public life and, specifically, in the political decisions that bind the whole community. This would mean expelling them from the world in which they live and work, which would clearly be excessive and would, to some extent, extinguish or, at the very least, dampen anyone's desire to be a member of the judiciary.

#### **IV. Conclusions**

23. Judges are human beings who have been vested with the power to administer justice and who swear to abide by the constitution and the law, such that their decisions exalt this honourable work. This does not, however, alienate them from the outside world and it is thus imperative that they understand their limits in relation to their activities in other domains, whether public or private.
24. Those who exercise judicial functions are entitled to participate in the public life of the society in which they act, particularly in social and cultural contexts. Nevertheless, their actions in any of these areas must adhere, in general, to the standards of behaviour expected of individuals and, specifically, to the legal, ethical and moral rules laid down to guide the conduct of a good judge.
25. Although each country has rules that aim to delimit judges' actions in the context of public life - as is the case, for example, with the system of impediments, challenges, ineligibilities, prohibitions and incompatibilities that are generally established in each country's supra-legal, statutory or procedural rules - these provisions must be harmonised with the principles established in the Ibero-American Code of Judicial Ethics and other supranational ethical systems, such as the Bangalore Principles of

Judicial Conduct and, above all, with the general rules and principles that guide the course of the lives of people in society as a whole. All of this aims to ensure high levels of quality, as well as guarantee and preserve the independence of the judiciary, which will ultimately contribute to the legitimisation of judges' activities and generate trust and legal certainty in their decisions.

26. In view of the above, it is necessary to recommend that judges exercise extreme caution in their participation in social and cultural spheres, in the understanding that ethical and moral conduct adheres to supranational norms and rules and also to those established by each country to ensure the efficiency of judicial activities. They must always be careful not to abuse their position in order to interfere in or influence other spheres, nor to allow others to influence theirs or determine the meaning and scope of their decisions. A servant of justice should be characterised by and project an image of consideration, decency and intellectual and moral honesty which is indispensable and immovable, specifically, in the view of any reasonable observer and, in general, that of society.

## **V. Recommendations**

27. Based on the considerations above, the Ibero-American Commission on Judicial Ethics makes the following recommendations with respect to the ethical exercise of judicial functions.
28. Judges should be characterised by their observance of conduct which is guided by the dictates of ethics and morality. This should serve as the basis for behaving prudently and thoughtfully in all areas of life, including social and cultural contexts, but above all, in a way that is free of any interference that might affect their image and cast doubt on the objectivity of their decisions.
29. When participating in social and cultural life, judges must take into account the rules and principles of supranational order, as well as the system of impediments, challenges, ineligibilities, prohibitions and incompatibilities established by their country, and act according to the dictates of ethics and morality that guide their life not only as an official entrusted with judicial duties but also as part of the society in which they live.
30. Judges' participation in any public sphere other than their own must be allowed from an institutional standpoint but must also be irreproachable and dispassionate, without defending the opinions of others, nor imposing their own, and without championing specific movements, causes, parties or political ideologies, nor social or cultural establishments, since this could engender doubt about their objectivity and cloud their image, which, ultimately, could have serious repercussions on the dignity of justice.
31. Finally, it is necessary that judges convey trust to the whole of society, in such a way that this automatically legitimises their judicial work and, ultimately, projects a positive image of the administration of justice which they serve.

32. Although democratic states are founded on harmonious cooperation between all their public strata, principally between the different branches of public power, this cannot entail, let alone justify, interference or any kind of indiscretion that might undermine the independence and autonomy of the judiciary.
33. It is recommended that each country's higher education establishments and judicial colleges should create protocols and programmes which raise awareness among judges (continuing training), as well as those who aspire to carry out such important work (initial training), about the need to act in all areas of life - but especially in judicial, social and cultural spheres - with strict adherence to the ethics and morality that characterise a good servant of justice. This will help prevent the dismantling of the legitimacy of judicial decisions and, ultimately, the dignity of justice and ensure that, in the view of any reasonable observer, judicial functions are performed by the best people and that they are characterised by high standards of quality, without influence from other agents that might affect their work and institutional duties in any way.
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