



REPORT (CONSULTATION 3/18), OF 23 OCTOBER 2018.

THE PARTICIPATION OF JUDGES IN TRAINING OR DISSEMINATION ACTIVITIES ORGANISED BY A PROFESSIONAL FIRM; IMPARTIALITY; APPEARANCE OF IMPARTIALITY; RIGHT AND DUTY TO RECEIVE TRAINING

CONSULTATION

[...]

II. OBJECTIVE OF THE CONSULTATION

1. This consultation raises the possibility of a judges attending and participating in an training and dissemination activity organised by a professional firm. The consultation does not provide clarification regarding the nature of the professional firm organising the training activity. In any event, the consultation should be understood to primarily refer to law firms with lawyers who appear before the court in which the judge performs his or her jurisdictional function, without excluding other professional firms whose staff may appear as experts or may be appointed at the request of the court to undertake bankruptcy administration functions.

2. The consultation contains a specific reference to the financial remuneration of the training activity in which the judge may participate under the premise that the other participants in the training activity are going to receive this remuneration.

3. Having examined the text of the Principles of Judicial Ethics, it can be considered that, in relation to this consultation, various ethical principles come into play:

Principle no. 16: *Impartiality also imposes the duty to avoid conduct that, within or away from the proceedings, could call it into question or prejudice public trust in justice.*



Principle no. 17: *Judges must endeavour to ensure the upholding of the appearance of impartiality in coherence with the essential nature that material impartiality has for the exercise of jurisdiction; in relation to principle 10: Judicial impartiality is the distancing of judges from appearing parties, to which they must remain at an equal distance, and regarding the object of the proceedings, to which they must refrain from taking an interest.*

Principle no. 34: *Judges have the right and obligation to receive training and remain up-to-date, and to demand appropriate means of training in order to be able to carry out their functions at optimum professional levels.*

III. ANALYSIS OF THE QUESTION

4. The consultation draws from the logical concern of a judge who is offered the possibility of participating in a training or dissemination activity, typical of a debate forum, in the event that the organisation of the same is undertaken by a professional firm that may appear before the court or tribunal in which the judge performs his or her function. Such concern is essentially related to the concept of appearing to be impartial and there is a clear ethical obligation to ensure this is upheld. This is true to the extent that public knowledge of the judge participating in said activity may cause other parties, other professionals who appear before the same court or tribunal, or even general public opinion, to hold that that the judge may accord some form of more favourable treatment to those professionals from the firm that organised the debate forum, or that the professionals from this firm may have privileged knowledge of criteria in accordance with which the aforementioned judges bases his or her rulings on specific matters or questions.

5. Before beginning, it is necessary to remember that the Judicial Ethics Committee only evaluates the ethical aspect of the question posed, for which it has to be considered as a prior premise that the participation of the judge in the corresponding debate forum is fully in accordance with the requirements of the Organic Law on the Judiciary, and the Regulations of the General Council of the Judiciary that formulate it, in matters relating to the compatibility of the activity in question with the performance of



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the jurisdictional function. Furthermore, in the event of receiving any type of fee, emolument or benefit, it is assumed that this is duly documented, justified and communicated to the Tax Administration for the corresponding effects.

6. The participation of a judge in debate forums related to the specialist knowledge that as such he or she possesses has a training dimension for the judge and a dissemination dimension for the other participants. We cannot ignore the importance of the educational function that judges may contribute in spheres distant from those related to the jurisdictional function in the strictest sense, given their generic and specific training in Law and the practical knowledge that arises from their professional work. This educational function is recognised in the Principles of Judicial Ethics, specifically in principle no. 20: *In their relationships with the communications media, judges may carry out a valuable educational function in terms of explaining the law and the way in which fundamental rights operate at the core of the process.* Although this principle alludes to relationships with the communications media, extending this positive interpretation to encompass judges using their freedom of expression allows any educational function that judges may fulfil to be classified as valuable. It should also be considered that, in accordance with the already mentioned principle no. 34, the participation of judges in activities that may bring them training constitutes an ethical duty.

7. Addressing the question of the ethical obligation to preserve the appearance of impartiality referred to in principle no. 17 requires a reference to the essential character that material impartiality has for the exercise of the jurisdiction. This obliges us to turn to principle no. 10, which refers to the distancing of judges in respect of both the parties and the object of the proceedings. It should therefore be considered that the appearance of impartiality, which judges have an ethical obligation to uphold, must refer to specific parties and a specific procedural objective. In this sense, it cannot be considered that the participation by a judge in a training or dissemination activity organised by a professional firm is always bound to affect the appearance of impartiality referred to in principle no. 17, provided that the professional firm and the subject of the activity organised have no effective connection with specific proceedings underway in the court in which the judge exercises his or her jurisdiction. However,



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considering the relationship between principles nos. 16 and 17, it must be concurrently understood that there is a risk such participation may affect the aforementioned appearance of impartiality, which ethically requires the judge to carry out an evaluation of the specific circumstances in which such participation will unfold.

8. The ethical evaluation that judges have to carry out in respect of whoever invites them to attend and participate in a debate forum with these characteristics must also take into consideration premises other than the mere connection of the activity with specific proceedings underway in the court.

The location of the course is thus of particular importance, given that holding it in the offices of the professional firm or in premises that may be identified as pertaining to the same increases the risk of affecting the appearance of impartiality, especially if there is the possibility of taking or disseminating a photograph of the judge together with the name of the professional firm or a logo that enables its identification, thus gaining publicity associated with the judge who participates in these sessions.

The number of cases in which the firm organising the activity appears before the judicial district in question is also important. However, the way in which the activity is publicised has even greater relevance, as greater transparency regarding the content and development of the activity and regarding the identity of the participants dispels any suggestion that the judge's involvement may be sought for reasons over and above the quality of his or her specialist knowledge of the material.

Of equal relevance is the number of participants in the activity, as both speakers and attendees, given that a training activity in which there is wide spectrum of specialists who share their knowledge of the material, including the judge, diminishes the risk of affecting the appearance of impartiality. Aiming the training course at a wider sphere of individuals and professionals also reduces the risk of suspecting that privileged knowledge of the judge's criteria in certain specific aspects may be being sought.

9. Finally, the question of the receipt of remuneration for participating in the activity organised cannot be considered related to no. 28 of the Principles of Judicial Ethics:



Judges will not accept any gift, courtesy or consideration that exceeds logical social conventions and, in no event, where it endangers their appearance of impartiality. We must start from the basis that such remuneration, which according to the consultation is modest, is duly documented, declared before the Tax Agency and is analogous and proportional to that of the other participants in the debate forum in question. Having fulfilled these prerequisites, we consider that if the judge evaluates his or her participation in the training activity from an ethical perspective as respecting the appearance of impartiality, in principle, the existence of this remuneration and its payment in accordance with the basic principles of transparency removes any suspicions that the relationship between the judge and the professional firm organising the training activity in question, has a spurious purpose.

IV. OPINION

10. In relation to the consultation submitted, the Judicial Ethics Committee issues the following opinion:

- Judges' participation in training and dissemination activities related to their specialist knowledge, both theoretical and practical, in circumstances that do not affect either impartiality or the appearance of impartiality, enables them to fulfil ethical duties in relation to their obligation to undertake training and the valuable dissemination function that they can provide to society.
- The assistance and participation of a judge in debate forums organised by a professional firm may, in certain circumstances and on occasion, affect the appearance of impartiality in respect of the judge, which makes it necessary to carry out a prior ethical evaluation regarding his or her participation in said activity.
- Relevant elements for this evaluation are, among others, the specific connection between the professional firm and the subject of the organised activity with specific proceedings underway in the court where the judge exercises his or her jurisdiction; the volume of cases in which the firm



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organising the activity appears before the judicial district in question; the publicity given to the activity and the identity of those involved in it; and the number of participants in the activity, in terms of both speakers and attendees, as well as their differing professional origins.

- The location of the activities in question acquires particular relevance, given that holding them in the offices or premises of the professional firm organising the activity increases the risk of affecting the appearance of impartiality.
- In principle, receiving remuneration or reward for the participation of the judge in the aforementioned debate forum, always under the conditions of absolute transparency, and of an equivalent amount to the other participants, would not affect maintaining the appearance of impartiality and, on the contrary, could remove any suspicion that the relationship between the judge and the firm organising the training course has a spurious purpose.