



**REPORT (CONSULTATION 9/2019 ), OF 12 JUNE 2019.**

**PRINCIPLES OF INDEPENDENCE AND IMPARTIALITY. ETHICAL IMPLICATIONS OF THE SECUNDUM ALLEGATA ET PROBATA PRINCIPLE**

**I. CONSULTATION**

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**II. OBJECTIVE OF THE CONSULTATION**

1. The opinion of the Committee is sought on the possibility of a judge, who has tried an employment case in which the claim is against two companies, being able to take into account the resolved matters in the proceedings in question in order to pass judgment in another proceedings in which a lawsuit is only brought against one of these companies, or whether he may request the extension of the lawsuit ex officio, with a view to avoiding detriment to the workers.

2. Furthermore, the Committee is asked to issue a report on the possibility of taking into account the information that appears on the court files in order to apply them to individual cases in which the evidence provided is insufficient to issue a judgment in the terms requested by the claimant.

3. The matter raised is related to independence, specifically principle 2, according to which *Judges should be of an attitude of mind that, aside from their own ideological convictions and personal feelings, excludes from their decisions any outside interference towards their assessment of the entire evidence gathered, the appearance of the parties in the proceedings, in accordance with the rules of procedure, and their understanding of the legal regulations to be applied.*

It is also connected to impartiality, specifically to the following principles:

*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.*



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11. *Impartiality also operates internally regarding the judge on whom it demands, before deciding on a case, he or she identify and make efforts to overcome any prejudice or predisposition which could harm the integrity of the decision.*

12. *Judges cannot maintain any connection whatsoever to the parties, nor can they show favouritism or preferential treatment that puts into question their objectivity, either when directing the proceedings or making decisions.*

### III. ANALYSIS OF THE QUESTION

4. In relation to the matter raised, the principle of impartiality attempts to stop the judge from displaying any favouritism or preferential treatment during the proceedings that puts into doubt his objectivity when issuing a judgment, with this being the case even where one of the parties has not appeared, to which the judge must avoid any information that reaches him from another channel outside the proceedings under trial at that time from being able to alter the impartial position required during trial.

In this case it so happens that the judge who is trying the second claim also tried the first and this knowledge creates bias in his judgement, to which it is advisable that he make attempts to overcome any predisposition that may endanger the integrity of his decision. In other words, the judge should assess whether, in the event that he had only tried the second case, he would have resolved it in the same manner as that put forward now, and if he had been aware of all of the aspects that have been highlighted as a result of the first claim.

5. Regarding the possibility of requesting the extension of the claim ex officio, such a possibility would suppose an infringement of principle 13, in the sense that it would derive from the notion the judge has of the background to the case, which would not have been alleged by the party or been an object of evidence, to which he would be bringing forward his decision to the procedurally foreseen moment, which is that of issuing a judgment.

To this is should be added that, outside of those cases in which the law permits it, the judge cannot be a substitute for the function assigned to the professionals who intervene in the proceedings.



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6. Lastly, regarding the possibility of the judge being able to take into consideration the information that appears in the files of the court in order to apply it to individual cases, it is important to point out that this would violate the principle of independence, since the judge would complete the evidence assessment in the trial and this would benefit one of the parties in the proceedings, so he would have to justify the intention of this.

### **IV. CONCLUSION**

ii) Generally speaking, in their task of judging, judges must avoid being guided by the information that they could have on the matter before them, where this has not been alleged by any of the parties, to which when issuing a judgment they must dispense with information obtained outside the proceedings.

ii) While procedural law does not permit it, under no circumstances will judges be able to introduce facts distinct from those alleged by the parties, nor may they attempt to substitute the functions of the professionals who intervene in proceedings.

iii) In terms of proven facts, judges must make efforts to objectively abide by the result of the evidence presented.