



REPORT (CONSULTATION 15/2019), OF 23 OCTOBER 2019

FREEDOM OF EXPRESSION OF THE JUDGE. PARTICIPATION IN A TELEVISION DOCUMENTARY ON A CRIMINAL MATTER THE JUDGE HAS INVESTIGATED.

I. CONSULTATION

[...]

II. OBJECTIVE OF THE CONSULTATION

1. The opinion of the Committee is sought on the advisability, from an ethics point of view, of the participation of the consulting magistrate-judge, who investigated a criminal matter that had a certain interest from the media, specifically the murders of elderly people by a hospital porter, in a television documentary covering the matter in question and for which the programme makers have requested the participation of the magistrate-judge in order to explain the proceedings and how the investigation developed, it being made clear in the consultation that the criminal matter has already been tried, and a final judgment issued.

2. The question put forward is related to the principle of integrity, specifically with the statement of the same reflected in section 31 of the Principles of Judicial Ethics, which literally reads:

“Judges, as citizens, have the right to freedom of expression, which they will exercise with prudence and moderation with the objective of preserving their independence and appearance of impartiality, and maintain social trust in the judicial system and jurisdictional bodies.”

III. ANALYSIS OF THE QUESTION

3. The participation of a judge in a television documentary about a criminal matter in which he or she has taken part in the investigation stage, specifically in the case we are examining, in which the secrecy of the investigatory stage is not in question, given that the criminal proceedings have already been tried and a final judgment issued, is protected by the freedom of expression recognised in the aforementioned section 31 of



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the Principles of Judicial Ethics, and may contribute to reinforce the trust of citizens in the Spanish criminal justice system.

4. However, the formulation of the principle of ethics we are examining itself advises us that this faculty shall be exercised with “prudence and moderation”, and in this case this is justified not just because of the aim of preserving the independence and appearance of impartiality in the role of investigating judge, but in addition because of the special connotations that concur in this case.

5. In the case before us, and even when referring to the fact that the matter has already been tried and the judgment is final, we cannot ignore, and this is expressly mentioned in the consultation, that steps have been taken in the investigation stage, including the removal of the body, forensic autopsies, and the statements contained in the investigation, which may reveal difficult and sensitive details, whose public dissemination could injure the moral integrity of victims’ families, as well as contribute to the achievement of morbid aims that are in no way of benefit to society.

6. Therefore, it is recommended that the judge who participates in this type of television documentary programme take the necessary precautions to avoid his intervention therein having the consequence of revealing details relating to the investigation stage that could have such effects.

IV. CONCLUSION

In view of the foregoing, we issue the following opinion:

i) The participation of judges in a television documentary programme on criminal matters in which they have been involved as investigators in the preliminary stage, and already concluded by final judgments, is protected by the freedom of expression recognised in section 31 of the Principles of Judicial Ethics.

ii) This faculty must be exercised with “prudence and moderation”, avoiding the possibility of the revelation of difficult and sensitive details whose public dissemination



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could injure the moral integrity of victims' families, as well as contribute to the achievement of morbid aims that are in no way of benefit to society.