



REPORT (CONSULTATION 17/19), OF 23 OCTOBER 2019

ETHICAL CONSIDERATION REGARDING THE RELATIONSHIP BETWEEN JUDGES AND JOURNALISTS WHO COVER INFORMATION FROM THE COURTS.

I. CONSULTATION

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II. OBJECTIVE OF THE CONSULTATION

1. The consultation should fall within the sphere of the always complex relationships instituted between the judiciary and the media, especially when the former hears matters of evident public importance, for which a name has even be coined “high-profile media cases”. In particular, in this instance the opinion of the Commission is sought regarding the most appropriate or adequate response that can be formulated by a judge forming part of a collegiate judicial body in the face of a request by journalists to be received in order to obtain statements relating to matters disclosed before the corresponding court.

2. Although, logically, the Principles of Judicial Ethics do not contain detailed and conclusive rules, they do however provide different guidelines that enable the framework of the relationships between judges and the media to be drawn. Above all, principle 31 reminds us that judges enjoy the fundamental right of freedom of expression, which, it has to be said, must be exercised with *prudence and moderation*. Furthermore, principle 35, attributes to judges the *duty to assume a positive attitude towards transparency (...), to which they may rely on the means of institutional communication at their disposal*.

3. However, it is in principles 19 and 20, included within the Chapter dedicated to impartiality, where the most relevant guidelines involved in this consultation appear. On the one hand, principle 19 establishes as a general criteria that *in their social lives and in their relationship with the communications media judges may contribute reflections and opinions*; indeed, principle 20 adds that these reflections and opinions, *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*. However, on the other hand, this



invitation to both communication and education encounters a clear call for prudence and self-restraint, namely that judges *must be prudent in order to ensure that their appearance of impartiality is not affected by their public statements, and they must show, in any event, discretionary respect for information that could prejudice the parties or the development of the proceedings* (principle 19).

4. Finally, the question raised does not cease to be relevant even from the point of view of independence. As principle 2 outlines, in the adoption of judicial decisions any interference from outside the proceedings and the substantive and adjective rules that may be applicable must be excluded, which means that the judicial conviction must be formed and be able to be justified solely on the basis of the evidential material and of the laws pertaining to the case, without heeding external influences or opinions. Thus, principle 6 imposes on judges the duty to *resist all direct or indirect attempts by third parties removed from the proceedings who are inclined to influence their decisions, whether they originate from the other political powers, pressure groups or public opinion, or even the Judiciary itself, avoiding taking into consideration, upon issuing their rulings, any expectation of approval or rejection from the same.*

III. ANALYSIS OF THE QUESTION

5. Freedom of expression, which applies to judges and magistrate-judges as citizens, like all other freedoms presents a positive dimension and a negative one: by virtue of the former, the holder of the right may freely express and disseminate his or her thoughts, ideas and opinions; by virtue of the latter, he or she may also refrain from doing so. In other words, freedom opposes both the negative prohibition and the positive obligation, so that the protected conduct (expressing oneself) is immune to both one and the other.

6. From this perspective, the fundamental question contained in the consultation, which is “what should the judge do?” when faced with a request for information regarding a case handled by his or her court or tribunal, receives an initial response on the basis of freedom of expression itself, which is expressly included in ethical principle 31. It will be the good sense of the judge that determines whether or not to proceed to make



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statements, and to what extent, but ethically there is no scope for expressing reproach for the decision to speak or to refrain from doing so.

7. However, this initial response should be expanded on. It should be expanded on because, among other reasons, the Principles of Judicial Ethics themselves include an invitation to maintain a fluid relationship with the media. Thus, when principle 20 talks of the *valuable educational function* that a judge may carry out, or when principle 35 recommends assuming a *positive attitude towards transparency*, this favours a positive exercise of freedom of expression, that is a dialogue between judges and public opinion via media professionals. Although this same principle 35 also reminds us that in order to maintain this dialogue judges *may rely on the means of institutional communication at their disposal*.

8. This last point must be particularly emphasised when the media is interested in a case that the judge is currently hearing, as it is very easy for an indiscretion to reveal information that should not leave the proceedings, or that it is not advisable for this to happen. Accordingly, when a judge is hearing a case, be it in the context of a criminal investigation or passing judgment on a case in courts of any jurisdiction, surely the most advisable course of action is to refrain from making statements to journalists, and to leave the dialogue with the media to the press offices of the High Courts of Justice of the Supreme Court.

9. The central question is not therefore whether the judge or magistrate-judge is able to provide information. The fundamental, and at the same time the most complex and delicate question consists of clarifying *in which cases, how and to what extent* is it advisable to do so. Here the Principles of Judicial Ethics introduce various general precautions and calls for self-restraint, which have already been expressed: in the *prudence and moderation* in the exercise of free expression spoken of in principle 31; prudence is again called for in principle 19 in order that *their appearance of impartiality is not affected by their public statements* Naturally it is the judge him or herself to whom it corresponds in each case to evaluate the extent of the prudence and moderation demanded by the Principles The latter of the aforementioned principles even adds a prohibition, namely that judges *must show, in any event, discretionary respect for the information that could prejudice the parties or the development of the proceeding*



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10. Accordingly, it is generally recommended that the judge remains vigilant in order that when information is given to the media, this does not compromise his or her appearance of impartiality, and furthermore, as it involves a collegiate body, the independence of its components, avoiding, for example, revealing details of debates held within the same. He or she should, in an event, omit anything that may prejudice the parties or the development of the proceedings.

11. These precautions are accentuated when it is one of the so called “high profile media cases”, in which it is advisable for the judge to carefully consider whether it is prudent to provide information or make a statement personally and, if so, to what extent should he or she proceed to do so, as it seems obvious that the risks increase in this type of cases.

12. In contrast, it is clear that these calls for self-restraint in relation to giving information are relaxed when the proceedings are concluded and a final judgment has been issued, although neither does the duty of prudence and moderation completely disappear. Information or opinions that may damage the moral integrity of the victims, those who were involved in the proceedings or their families should be avoided.

IV. CONCLUSION

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

i) No Principle of Judicial Ethics imposes on judges the ethical duty of granting interviews or providing information to the media regarding matters that are being heard or have been heard in their court or tribunal.

ii) However, a positive attitude towards transparency and dialogue can also be deduced from the Principles, as this contributes to the educational task of explaining and disseminating the content of the law and the functioning of the judicial system, in addition to making it more accessible to public opinion.

iii) The information or public statements given by the judge do however, find a conclusive limit that seeks to preserve both the rights and interests of the parties and the smooth conduct of the proceedings, and hence, *in any event, discretionary respect*



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for the information that could prejudice the parties or the development of the proceedings (principle 19) must be maintained.

iv) Information or opinions given by judges in the exercise of freedom of expression and at the service of desirable transparency should in any event, and in the first instance, be carried out with prudence and moderation, in order that their appearance of impartiality is not affected (principle 19). However, this is also to prevent this information from potentially contributing to creating opinions or generating external influences that may affect the independence of the judicial system and the image of the same that is projected into public opinion.

v) This call for prudence and moderation, which seeks to preserve both the appearance of impartiality and the independence of judges and magistrate-judges, is particularly stringent if it involves information relating to cases that are being heard or have been heard by the Court or Tribunal itself, especially when there is a high level of media interest in these cases. In this sense, principle 35 offers a way forward, which may in fact be considered a recommendation, namely providing information via the available means of institutional communication, basically the press offices of Supreme Court or the High Courts of Justice.

vi) Logically, the precautions expressed are attenuated when the information relates to proceedings now concluded with a final judgment, even more so in respect of more historic proceedings. However it does not completely disappear: the call for prudence and moderation remains at least in terms of preserving the moral integrity of the victims, those who were involved in the proceedings or their families.