



REPORT (CONSULTATION 2/21) OF 21 JUNE 2021

I. QUERY

I would like to know the Judicial Ethics Committee's opinion on a senior judge's prospective membership of the Bioethics Committee at the university with which they have been linked, as an adjunct professor, for more than 28 years.

At the proposal of a professor who is a member of the university's Bioethics Committee, the governing board approved my membership, taking into account my extensive experience as a teacher in the area of Civil Law and as a senior judge in the Provincial Court, as well as my participation and collaboration in numerous university activities, with the required accreditation of compatibility issued annually by the General Council of the Judiciary.

The aim of the university's Bioethics Committee is to evaluate and issue opinions, which are mandatory and binding, corresponding to projects submitted by researchers from any field, although most of them come from the area of biology and healthcare.

The Committee's composition is plural in nature, comprising a representative from the Data Protection Agency and professors and researchers of biomedicine, psychology, moral philosophy and law. Specifically, our mission is to analyse, from a legal standpoint, compliance with European and national regulations, particularly with respect to experimentation on humans and animals and the protection of personal data.

Projects are uploaded to a website that can be accessed only with a password. These are then analysed and observations are added. Every two months, approximately, there is a meeting of about two hours' duration, during which the Committee either approves, rejects or requests clarification on each project.

Participation in the Committee is completely voluntary, with no remuneration, and does not interfere with the normal working day.



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The current Regulations of the Bioethics Committee are attached. A new set of regulations is being prepared by a law professor and they have asked for my participation in the revision.

II. PURPOSE OF THE CONSULTATION

1. The querier wishes to know the Judicial Ethics Committee's opinion on a senior judge's prospective membership of the Bioethics Committee at X University, with which they have been linked, as an adjunct professor, for almost three decades. Their appointment as a member of this committee was approved taking into account their position at the university as an adjunct professor, their teaching merits, their experience as a senior judge in the Provincial Court, as well as their high level of involvement in university life through their participation in multiple activities.

2. The function of the Bioethics Committee at this university is to evaluate and issue opinions related to research projects in any field of study. It is a collegial body of a plural nature that determines compliance with national and European regulations in relation to experimentation on humans and animals and the protection of personal data.

3. The Committee meets every two months, approximately, in order to approve, reject or request clarification on the research projects submitted. There is no payment involved in participation in this collegial body at the University.

4. The querier has also been asked to collaborate in revising the Regulations of the Bioethics Committee, a copy of which is attached.

5. Without prejudice to subsequent observations, the purpose of the query could affect the following Principles of Judicial Ethics, according to the text approved at the session on 16 December 2016:

3. Members of the judiciary must make an active commitment to the proper functioning of the judicial system, as well as promote an attitude of respect for and confidence in the judiciary in society and exercise their judicial duties in a prudent and moderate manner, with respect for the other powers of the State.



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9. Judges must behave and exercise their rights in any activity in which they are recognisable as such in such a way that they neither compromise nor damage society's perception of the independence of the judiciary in a democratic country under the rule of law.

16. Impartiality also entails the duty to avoid conduct, both in and out of court, which might jeopardise their impartiality and undermine public confidence in justice.

17. Judges must ensure that the appearance of impartiality is upheld in accordance with the fundamental role that material impartiality plays in the exercise of justice.

18. All members of the Judicial Service must avoid conflicts of interest. In the event that any should occur, they must disclose them with complete transparency and as soon as possible, through any of the legally provided mechanisms.

22. Integrity requires that judges adhere to conduct that reaffirms public confidence in the administration of justice, not only in the exercise of justice but also in all circumstances in which they are recognisable as judges or which call on their status as such.

34. Judges have a right and a duty to develop and update their proficiency, and to demand the appropriate means of training to enable them to perform their functions at optimal levels of professionalism.

6. Of special relevance to the purpose of this consultation are the references to Principles 3, 9, 16 and 17, relating to judges' independence, duty of impartiality and appearance of impartiality.

7. There is a close relationship between the object of this query and this last aspect of the principle of impartiality - the 'appearance of impartiality' - understood as stated in the Bangalore Principles of Judicial Conduct, since its approval by the United Nations Commission on Human Rights up to the Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, adopted in 2010, in the sense expressed in paragraph 2.2:



'A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary'.

III. ANALYSIS OF THE ISSUE

3.1. Reference to previous opinions issued by the Judicial Ethics Committee

8. The question posed by the querier concerning a senior judge's prospective membership of the Bioethics Committee at X University, to which they have been linked as an adjunct professor for almost three decades, recalls the Opinions (Consultation 3/18) of 23 October 2018, (Consultation 7/18) of 3 December 2018 and (Consultation 3/19) of 12 February 2019, in which it is reiterated that 'the Judicial Ethics Committee evaluates only the ethical aspects of the question posed'. Consequently, a preliminary assumption must be made that the senior judges' participation in the Bioethics Committee at X University is in complete accordance with the requirements of the Organic Law on the Judiciary and the Regulations of the General Council of the Judiciary in respect of the activity's compatibility with the performance of judicial functions. The query states that the senior judge has the required accreditation of compatibility issued annually by the General Council of the Judiciary

9. An issue which is entirely absent in this case is the question of whether any of the members of the University's Bioethics Committee receive fees, emoluments or gratuities, since there is no payment involved in participation in this collegial body.

10. As can be seen in the Opinion (Consultation 3/18) of 23 October 2018, a senior judge's membership of the Bioethics Committee is justified to the extent that they are considered an expert in the field of knowledge of law, in accordance with Article 3 of the Regulations of the Bioethics Committee of X University, which regulates the composition of the committee and the appointment of its members. Specifically, the Opinion (Consultation 3/18) of 23 October 2018 emphasises that *'[t]o address the issue of the ethical duty to preserve the appearance of impartiality, as referred to in Principle 17, reference must be made to the fundamental role that material impartiality plays in the exercise of justice'*.



11. A senior judges' participation in the Bioethics Committee at X University cannot be considered to affect the appearance of impartiality referred to in Principle 17, provided there is no concrete link between their academic position and the purpose of the organised activity, and a specific process pursued in the court where the judge has jurisdiction. The latter point appears to be covered in the Regulations of the Bioethics Committee of the University, under Article 4.7 as follows: *'Members of the Committee must refrain from participating in proceedings that might concern projects in which they are involved or in other cases where conflicts of interest might arise'*.

12. Likewise, the Opinion (Consultation 3/2018) of 23 October states the following:

'Judges' participation in training and educational activities related to their technical knowledge, both theoretical and practical, under conditions that affect neither impartiality nor the appearance of impartiality, enables them to fulfil ethical obligations related to their duty to develop their proficiency and the valuable informative function that they can perform for society'.

13. As can be seen in the Opinions (Consultation 7/18) of 3 December 2018 and (Consultation 2/20) of 16 March 2020, judges' participation in similar educational or informative activities related to their technical knowledge merits a positive assessment from the point of view of both the recipients and the judges themselves. We cannot fail to recognise the important work that they can carry out in areas beyond those that relate strictly to the judicial function, in the light of their expert training in legal matters and the practical knowledge that derives from their professional career. In this respect, neither should we overlook the educational function that senior judges can perform by virtue of Principle 20 of the Principle of Judicial Ethics: *In their relationships with the media, judges may play a valuable educational role in explaining the law and the way in which fundamental rights operate within the process.*

14. While the principle refers explicitly to relationships with the media, a broader interpretation, which looks favourably on judges' exercise of their freedom of expression, allows any educational function that they might perform to qualify as valuable. At the same time, it should also be borne in mind that, in accordance with Principle 34, judges' participation in activities that can provide training constitutes a duty of an ethical nature.



15. It is important to emphasise that in the event that the judge or senior judge stimulates debate among the university community on bioethical issues of general interest, they must avoid any reference to issues which are related, whether directly or indirectly, to cases which they are hearing, a proviso included in the Opinion (Consultation 10/2018) of 25 February 2019.

16. Also of interest with respect to this query is the Opinion (Consultation 14/2019) of 30 September 2019, concerning the teaching work of a member of the judicial service and considering the possibility that the head of their university department becomes involved in proceedings brought before their court. This opinion states that *'relationships that stem from the academic environment, as from any other public environment in which the judge is involved, may have consequences for the judge's ethical behaviour'*.

17. We should also bear in mind the Opinion (Consultation 21/19) of 10 February 2020, which also refers to the Opinion (Consultation 5/19) of 8 April 2019, on the publication of a work of fiction, which states:

'6. Artistic and literary production and creation, as well as scientific and technical production and creation, are permitted activities for judges or senior judges, as stated in Article 389.5 of the Organic Law on the Judiciary; they should, however, avoid subject matter which is directly or indirectly related to their own judicial activity'.

18. Finally, in terms of the importance of territorial scope with respect to the question posed, when considering the interests at stake, we refer to the Opinion (Consultation 8/2020) of 14 January 2021.

4.2. Analysis of the core issue

19. The senior judge's activity in this case takes place within a university institution governed by the principle of transparency with respect to the Bioethics Committee's content and its members' performance of their functions. This fact dispels any appearance that the judge's participation might be required for reasons other than the quality of their technical knowledge in this area. Indeed, the judge's activity as a member of the Bioethics Committee of X University need have no effect on objective impartiality or the appearance of impartiality. On the contrary, as acknowledged in the conclusions



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drawn in the Opinion (Consultation 7/18) of 3 December 2018, *'it may represent a valuable contribution in terms of both the informative or educational work that the judge performs and their right and duty to develop their theoretical and technical proficiency'*. The Opinion (Consultation 3/19) of 12 February 2019 concluded similarly.

20. Taking into account that the Bioethics Committee at X University has a plural composition - comprising a minimum of eight members who are experts in different fields of knowledge, including the field of law - and that it observes the principle of supporting responsible animal experimentation and the work of the scientific community (Article 3.1 of the Regulations of the Bioethics Committee of X University), there is a reduced risk that the judge's appearance of impartiality will be affected.

21. All judges must exercise caution to avoid damaging public confidence in the independence and impartiality of the administration of justice. Extra care must be taken with the matters addressed by the Bioethics Committee, since these may be particularly sensitive due to the subject matter of the research or the researchers involved. One guarantee that the judge's participation in the Bioethics Committee at X University need not affect the appearance of impartiality, as referred to in Principle 17, is the fact that the Regulations of the Bioethics Committee of X University include the following in Article 4.7: 'Members of the Committee must refrain from participating in proceedings which might concern projects in which they are involved or in other cases where conflicts of interest might arise'.

22. Nevertheless, the tasks performed by the judge as part of the Bioethics Committee of X University, in accordance with the functions stipulated in Article 2 of the Regulations of the Bioethics Committee of the university, must always be governed by prudence, taking special care to preserve their independence and the appearance of impartiality. We should bear in mind that in becoming a member of the Bioethics Committee, they do not relinquish their status as a judge or senior judge; rather they continue to identify themselves and express themselves as a member of the judiciary. Consequently, their behaviour in the performance of their functions within the Bioethics Committee must be guided by prudence and discretion, in accordance with Principle 22.

23. Since participation in the Committee is completely voluntary, involving no remuneration and no interference with normal working hours, as Bioethics Committee



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meetings are held quarterly at the request of the President, there is no risk posed with respect to the performance of their judicial functions.

24. At the same time, with respect to this specific query, because the senior judge is part of a university institution in a medium-sized city and due to the potential proximity between professional relationships and personal ties in the city where they work, they must take extra care not to jeopardise the duty of impartiality inherent in the judicial function. As the issue of territorial scope is not a trivial issue, it was addressed in Opinion (Consultation 8/2020) of 14 January 2021.

25. Finally, the fact that the judge has been invited to collaborate in revising the Regulations of the Bioethics Committee of X University is justified by virtue of their extensive knowledge in the field of law and their long career as adjunct professor, involving both teaching and research, which can be put to useful service in this collegial body at the university.

IV. CONCLUSION

I. Taking into account their extensive teaching and professional experience, the judge's membership of the university's Bioethics Committee does not, a priori, compromise the principle of impartiality with respect to their evaluating and issuing the corresponding mandatory and binding opinions on the projects submitted by researchers in any field of study governed by the Regulations of the Bioethics Committee of X University.

II. The judge's membership of the Bioethics Committee at X University entails the performance of tasks of a technical or legal nature, without any public exposure, since this committee is an internal collegial body of the university itself. This carries a lower risk of public perception of damage to the independence and impartiality required in the exercise of justice.

III. If the judge or senior judge is a member of a collegial body of a university institution in a small or medium-sized city, more care needs to be taken in the duty not to jeopardise



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the appearance of impartiality inherent in the judicial function, given the potential proximity between professional relationships and personal ties.

IV. The fact that the judge has been invited to collaborate in revising the Regulations of the Bioethics Committee of X University is justified in the case in question by virtue of their extensive knowledge in the field of law and their long career as adjunct professor, involving both teaching and research, which can be put to useful service in this collegial body at the university without jeopardising the ethical duties inherent to their position as a member of the judiciary.

V. In short, based on the information provided in the query, there seems to be no aspects of this specific case that would interfere with the duty to uphold the appearance of impartiality.