



Judicial Ethics Committee

REPORT (CONSULTATION 3/22) OF 26 APRIL 2022

I. QUERY

Under the rule of law, all citizens are equal before the law. We are all, therefore, obliged to comply with it.

As judges, in accordance with Article 318 of the Organic Law on the Judiciary, we have sworn or promised before taking office to faithfully uphold and safeguard the Constitution and the rest of the legal system at all times.

Moreover, we are fully independent, immovable and not subject to any entity or hierarchy. Indeed, we are subject to only one thing: the law, and from this law stems our legitimacy.

How does it affect judicial ethics and the public perception of justice and our image of impartiality when a judge on social media states (apparently seriously, without joking intent nor irony or sarcasm) that certain laws, which have been approved and which are of general application and mandatory for all citizens, should be breached, no matter how much they might disagree with this legislation? How does it affect judicial ethics and the public perception of justice and our image of impartiality when judges express their public support for politicians convicted of the most serious crimes or align themselves politically in ways other than those constitutionally provided for in our legal system?

I would like to know how this affects the principles of judicial ethics and the ethical conduct to which we, as judges, must adhere, not only in relation to our duty to preserve the appearance of impartiality, safeguard public confidence in the right to be judged according to legal parameters and maintain public confidence in the judicial system and the courts, as well as our institutional responsibility, but also in relation to the value of the oath or promise that we have given.



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I would like to know whether this oath or promise to faithfully uphold and safeguard the Constitution and the rest of the legal system at all times encompasses this duty not only within the judicial sphere but also in all those circumstances in which a judge is recognisable as such or which call on their status as such.

Taking all of this into account, I understand that we can legally hold a diverging opinion on a rule, or question its usefulness or formulation in legal forums, or even disagree with it politically or ideologically, but to go from this to publicly calling for non-compliance or supporting people who have been convicted by the courts is taking a very different path.

II. PURPOSE OF THE CONSULTATION

1. The query concerns how the principles of judicial ethics can be reconciled with the expressions and statements made by judges who, on social media, have publicly shown their support for politicians of a particular ideology who have been convicted by the courts for their participation in events that seriously violated national sovereignty and the political structure of the Spanish State, or who have publicly called for non-compliance with legal rules. It also asks to what extent this behaviour affects the principles of judicial ethics and the ethical conduct to which we, as judges, must adhere, not only in relation to our duty to preserve the appearance of impartiality, safeguard public confidence in the right to be judged according to legal parameters, and maintain public confidence in the judicial system and the courts, as well as our institutional responsibility, but also in relation to the value of the oath or promise made before taking office.

2. This query touches on several principles included in the Principles of Judicial Ethics:

The principle of independence

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.*



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The principle of impartiality

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.*

19. *Judges may share their reflections and opinions in their social lives and in their relationships with the media. They must, however, be prudent in ensuring that their appearance of impartiality is not affected by their public statements, and, in all cases, they must show discretion with respect to any information that might harm parties or proceedings.*

21. *When democracy, the rule of law and fundamental freedoms are in jeopardy, the obligation to discretion is superseded by the duty to denounce.*

The principle of integrity

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.*

25. *Judges must actively commit to respect and ensure the dignity and equality of all persons, without discrimination on the basis of sex, racial or ethnic origin, physical or mental disability, religion or belief, sexual orientation or political conviction, or any other social or personal circumstance.*

29. *Judges must be mindful of the fact that the dignity of the judicial function requires them to behave accordingly.*

31. *As citizens, judges are entitled to freedom of expression, which they should exercise with prudence and moderation in order to preserve their independence and appearance of impartiality, and to maintain public confidence in the judicial system and the courts.*



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III. ANALYSIS OF THE ISSUE

3. A judge, like any other person, may freely express their thoughts or opinions, given that this is a fundamental right recognised and protected in Article 20.1(a) of the Spanish Constitution. The text of the Principles of Judicial Ethics, adopted by the General Council of the Judiciary, states in Principle 31 that, in general, *'As citizens, judges have the right to freedom of expression'*. Nevertheless, the very same text also recognises that this right must have certain limitations which are imposed by the need to *'preserve their independence and appearance of impartiality, and to maintain public confidence in the judicial system and the courts'*. Consequently, this ethical principle requires that freedom of expression should be exercised by judges *'with prudence and moderation'*.

4. This Judicial Ethics Committee has had the opportunity in various opinions to address the issue of limiting judges' freedom of expression when they participate on social networks. This issue was first addressed, in a general manner, in the **Opinion of 25 February 2019 (Consultation 10/2018)**, which stated the following in **paragraph 5**: *'As citizens, judges should be able to access - and indeed do access - these social networks. As judges, they must take into account the risks that arise in relation to respect for the principles of judicial ethics, which may be affected by their participation in social networks even if they do not identify themselves as judges. The duty of every judge to be mindful of the fact that they are required to behave in accordance with the dignity of the judicial function (Principle 29) and exercise freedom of expression with the prudence and moderation necessary to preserve their independence and appearance of impartiality, and to maintain public confidence in the administration of justice (Principle 31) constitute ethical obligations that extend to all aspects of life, both personal and professional, as well as to participation in social networks'*.

In addition, **paragraph 6** specifies that *'When a judge uses social media to express an opinion after having disclosed their position, this gives rise to a number of risks, including the following: some people might consider that they are expressing their opinion in their capacity as a judge or member of the court; some might think that this is an opinion which is commonly held among the judicial body; when the opinion directly or indirectly concerns a case that they will hear, their appearance of impartiality might be affected; if*



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they speak harshly, their lack of restraint and prudence might undermine confidence in justice’.

Finally, **paragraph 9** refers to the fact that *‘the publication of personal opinions, whether they concern legal issues or matters outside the law, and certain reactions to third-party publications may compromise not only the appearance of impartiality referred to in Principle 17 but also, under some circumstances, the principles of impartiality, independence and integrity. This refers, on the one hand, to Principle 16, which entails the judge’s duty to avoid conduct which might jeopardise their impartiality and undermine public confidence in justice and, on the other hand, to Principle 9, which requires judges to behave and exercise their rights in such a way that they neither compromise nor damage society’s perception of the independence of the judiciary. It should also be remembered that Principle 22, referring to integrity, requires judges to adhere to conduct that reaffirms public confidence in the administration of justice in all circumstances in which they are recognisable as judges. This imposes an ethical duty on judges to be extremely careful when expressing their opinions, making personal assessments and reacting to other people’s comments, especially when they are recognisable as members of the Judiciary, and extra caution must be taken when using media which may be shared across social networks’.*

5. More specifically, and with respect to judges’ public statements concerning their political ideology, the first of the conclusions in the **Opinion of 14 January 2021 (Consultation 4/2020)** states: *‘Judges’ involvement in interviews, symposiums, public participation and social networks must adhere to the concept of political neutrality that is ingrained in the principles of impartiality, independence and integrity’.*

6. The Ethics Committee’s response to the questions posed by the querier falls within the framework of the doctrine set out in the opinions summarised above. It is clear that judges’ right to freedom of expression in terms of the statements they make on social networks and in the media is counterbalanced by limits that cannot be exceeded. These limits are reflected in the parameters of ‘prudence’ and ‘moderation’ which are expressly included in Principle 31. The concept of ‘political neutrality’ must also be taken into consideration by any judge who expresses opinions on any political event, whether on



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social networks or in the traditional media. There is no doubt that the violation of these principles, even unwittingly, can place the judge who voices these opinions in an ideological position that can lead society to believe that justice is politicised, thereby contributing to a lack of public confidence in justice, in the judicial system and in the courts that constitute it, with the resulting loss of institutional reputation.

7. Still greater risk comes with behaviour such as that identified in the query, which can never be protected by freedom of expression when it corresponds to members of a power of the State, who are as such strictly subject to the duties of the office to which they swore or promised when they were admitted to the Judicial Service, under the terms of Article 318 of the Organic Law on the Judiciary, which entails express compliance with the constitutional order and the legal system.

8. Above all, it must be borne in mind for the purposes of judicial ethics that the oath or promise that judges are obliged to take has an element of tradition, of solemnity, and especially of loyalty to principles and values which transcends mere formal declaration. This kind of behaviour, therefore, involves a breach of the commitment to moral order and loyalty which judges make when they take the oath or make the promise required by the Organic Law on the Judiciary. At a legal level, this promise or oath is a requirement for access to the judicial office. While it has a strong formal component, it is more than a simple rite or mere bureaucratic requirement. At an ethical level, it is equally important, and for this reason it is a public and solemn commitment which is undertaken voluntarily. In the exercise of judicial functions, it is an inescapable duty to comply unconditionally with constitutional and sub-constitutional legality, by virtue not only of that promise or oath, but also one's legal, regulatory or ethical obligations. This is understood in the query.

9. Nevertheless, the commitment involved in taking this oath or making this promise also entails ethical consequences outside the strictly professional sphere, in a judge's behaviour out of court. It is true that this promise or oath does not demand complete ideological and personal adherence to all the principles and values pertaining to the basic rule and the laws that implement them. These are compatible with a judge's critical assessment of one or other aspects, or their published opinions on legitimate



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discrepancies or reforms that they might personally consider desirable. They do, however, require a basis of fundamental loyalty. Certain ideas involving total opposition to the basic pillars of the constitutional order, among which are the essential ingredients of the rule of law (respect for the law and the legal formulas established for constitutional change), constitute a betrayal of this solemn commitment, which goes beyond the purely legal and professional sphere to project onto the ethical plane and personal attitudes which must be more strictly governed in judges than other citizens, precisely because of this public commitment and the functions assigned to them by society.

10. Finally, it should be noted that this kind of conduct constitutes a violation of paragraph 21 of the Principles of Judicial Ethics. This paragraph states: *'When democracy, the rule of law and fundamental freedoms are in jeopardy, the obligation to discretion is superseded by the duty to denounce'*. This clearly demonstrates to the judges in the Judicial Service that they may never allow themselves, when participating in the media or using social networks, to use expressions or make statements that might constitute a risk to the rule of law, the constitutional order or democracy itself.

We should recall that recital 5 of the Bangalore Principles states: *'a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law'*.

IV. CONCLUSION

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

- (i) A judge, like any other citizen, is entitled to freedom of expression, and as such may participate in the media and social networks.
- (ii) Judges' involvement in the media must be governed by respect for the principles of independence, integrity, impartiality and transparency.
- (iii) They must exercise their freedom of expression with the prudence and moderation necessary to preserve their independence and appearance of impartiality, observing political neutrality.



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(iv) Judges must be especially careful to ensure that their statements in the media do not lead society to believe that justice is politicised, thereby contributing to a lack of public confidence in justice, in the judicial system and in the courts that constitute it.

(v) Judges must also take into account that such expressions may violate the commitment to moral order and loyalty which judges make when they take the oath or make the promise required by the Organic Law on the Judiciary.

(vi) The protection of the principle of freedom of expression may never be invoked in the case of judges' statements on social networks or in the media if these constitute a serious attack on the rule of law, the constitutional order or democracy itself.