



REPORT (CONSULTATION 5/2022) OF 9 MARCH 2023

I. QUERY

I would like to pose a query concerning the private life of a judge. In the context of a specific case, I encountered an association of Christian lawyers. I heard the case with complete independence. After the case was concluded, however, it occurred to me to consider joining this association, in the exercise of my right to ideological freedom and expression, with the idea of defending Christian principles in the context of the law and offering opinions about legislation and natural law. My intention would not be to take an active role in this association but, rather, act as a contributor, in the knowledge that while I define myself by my private ideas in the exercise of my freedom of expression, this will never affect my judicial work; if I have a conflict with any case that I hear, I know that I have no conscientious objection and will apply the law in force at all times. I therefore ask the Committee to examine this case, to consider whether my judicial independence would be affected by the mere act of belonging to a private association with Christian religious ideas. Is it correct or even possible for a judge to belong to such an association?

II. SUMMARY OF THE QUERY

The querier indicates that, as a result of their appearance in a procedure assigned to their competence, they became aware of the activities of an association of 'Christian lawyers'. They state that they heard the case with independence and that the idea of belonging to this association occurred to them subsequently. They indicate that they would not play *an active role* but, rather, act as a contributor. They affirm that they will always apply the law in the event of a conflict arising in any of the procedures that they hear.

They ask the Committee's opinion on the possible impact on their independence and the correctness of their hypothetical membership of this association.



III. APPLICABLE ETHICAL PRINCIPLES

In the abstract, the following principles of judicial ethics apply as a framework for this query:

Independence

2. Judges must maintain an attitude of mind which, putting aside their own ideological convictions and personal feelings, excludes from their decisions any outside interference with their assessment of the entirety of the evidence presented, the examination of the parties to the proceedings, in accordance with the rules of the procedure, and their understanding of the legal rules to be applied.

Impartiality

10. Judicial impartiality is the separateness of the judge from the parties, with whom they must maintain an equal distance, and from the object of the proceedings, with respect to which they must have no interest whatsoever.

11. Impartiality also operates internally with respect to the judge, on whom it is incumbent, before deciding a case, to identify and attempt to overcome any prejudice or bias that might jeopardise the rectitude of the decision.

12. Judges may not have any relationship with the parties, nor show favouritism or offer preferential treatment that might call into question their objectivity in conducting the process or in their decision-making.

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.



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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.*

24. *Judges should avoid any risk of projecting an appearance of favouritism in their personal relationships with professionals connected to the administration of justice.*

IV. REFERENCE TO PREVIOUS OPINIONS

In response to previous consultations, the Judicial Ethics Committee has had the opportunity to issue opinions in terms that can be extrapolated to this query. There are no substantial differences or ensuing conflicts of reasoning which suggest departing from what has already been resolved.

Of particular relevance is the Opinion of 23 October 2018, issued in response to a query concerning a judge's attendance at debates organised by law firms. It states:

'A judge's attendance and participation in a discussion forum organised by a law firm might, under certain circumstances, affect the judge's appearance of impartiality, which means that a prior ethical assessment of their participation in such an activity should be made.'

Among the relevant parameters for consideration, it alluded to the fact that the law firm might have cases heard in the judge's court.

V. COMMENTARY ON THE BANGALORE PRINCIPLES

Principle 4.6 of the Bangalore Principles states:

'A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or



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herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary’.

At a more specific level, point 167 of the UNODC (United Nations Office on Drugs and Crime) edition of the Commentary on the Bangalore Principles of Judicial Conduct states:

‘A judge may participate in community non-profit organizations of various types by becoming a member of such an organization and its governing body. Examples include charitable organizations, university and school councils, lay religious bodies, hospital boards, social clubs, sporting organizations and organizations promoting cultural or artistic interests’.

VI. RECAPITULATION

Drawing directly on the principles of judicial ethics cited above, a number of considerations should be underlined in relation to the querier’s concern:

- Firstly, with respect to the principle of independence, judges must maintain an attitude of mind that puts aside their ideological convictions and personal feelings.
- Secondly, in relation to impartiality, there are two fundamental aspects: internal, relating to the judge themselves, and external, relating to the perception of equal distance between parties. Correspondingly, judges should not maintain ties with parties, nor carry out activities, whether in or out of court, that might call into question their impartiality.
- Thirdly, with respect to integrity, a judge’s conduct must reaffirm public confidence in the administration of justice in all circumstances in which they are recognisable as a judge. They must also avoid projecting an appearance of favouritism in their relationships with certain professionals.

With respect to this Committee’s established doctrine, the participation of a judge in certain activities organised by lawyers (law firms) may affect the perception of impartiality, and a prior ethical assessment should be made.

In relation to the spirit of the Bangalore Principles, further developed in the Commentary, a judge may participate in community non-profit organisations and, specifically, those of a religious nature.



VII. ANALYSIS OF THE CORE ISSUE

In order to examine the core of the question, it is necessary to analyse some of the specific information provided in the query. On the basis of this information, it can be seen that the association which they are considering joining has two main defining components: on the one hand, it is comprised of *lawyers* and, on the other, it is presided over by principles of action conforming to the *Christian* faith. The query also explicitly states that the association litigates within the scope of their court and that the judge posing the query has heard at least one of their lawsuits.

The summary made in the previous point entails evaluating the substance of each of the two main aspects that define the association. On the one hand, there is the fact that it is defined as '*Christian*', which is less of a concern (or, indeed, none at all). A judge has the right to the full exercise of their fundamental right to religious freedom, both internally (belief) and externally (acts of worship and community activities). There is no condition or restriction on this fundamental right at either domestic or international level in the regulations in force on judicial ethics. Similarly, the Bangalore Principles cited above affirm that a judge can participate in groups of a religious nature.

The second defining aspect of the association, '*lawyers*' (its members are practicing lawyers), is less easy to reconcile with the perception of impartiality. Both the set of principles referred to above and the Committee's established doctrine suggest the need for the judge to remain at equal distance from the parties, avoiding any out-of-court conduct that might call into question their impartiality, as could rationally be inferred from their membership of any group of lawyers, in any form, who practice within their jurisdiction.

Consequently, a judge's membership of an association of lawyers in active practice (even in a peripheral role) carries with it the possibility that the public's perception of impartiality will be damaged. At the same time, the judge's behaviour out of court might undermine their duty to reaffirm the confidence of the litigants in the administration of justice. This risk is higher if the association also litigates within their jurisdiction.



In general, regardless of its purposes and substance (e.g., the defence of fundamental rights or the rule of law, legal procedural support for the disadvantaged, the defence in court of certain ideological or religious values, or even leisure activities) the need to preserve the appearance of impartiality makes it inadvisable for a judge to join an association whose ordinary activities include litigating in the courts. Such an affiliation, even if it did not involve active involvement, would cast a shadow on the appearance of impartiality. What is decisive is not so much the aspect related to the association's values, as can be deduced from the consultation, but its activity, which, while it may not take precedence, is still very prominent, namely the bringing of lawsuits before the courts. This suggests that involvement would be inadvisable for anyone who, through their membership of the judicial service, is called on to preserve the appearance of impartiality in any procedural litigation.

VIII. CONCLUSIONS

1. Judges must maintain an equal distance between parties and ensure that the perception of equal distance is safeguarded.
2. Their conduct, both in and out of court, must reaffirm public confidence in the impartiality of justice.
3. Judges may not show any preference or favouritism toward parties who might appear before their court.
4. A judge's fundamental right to religious freedom is not affected or limited as regards performing external acts of worship or belonging to religious associations in the community to which they belong. This membership carries no risks of undermining the perception of their impartiality.
5. Judges must observe a special duty of restraint and caution when joining an association of lawyers, given that their membership carries with it a real and logical risk of affecting the perception of their impartiality in the eyes of the public.
6. In the opinion of this Committee, it is inadvisable from an ethical standpoint for a judge to become a member of an association among whose activities or purposes litigation in the courts plays a significant role, regardless of the nature or purpose, insofar as it might damage the public's perception of the impartiality of the judiciary.