



## **Tenth opinion, of 16 October 2020, of the Ibero-American Commission on Judicial Ethics on training in the principles and virtues of judicial ethics. Reporting judge: Commissioner Luis Porfirio Sánchez Rodríguez**

### **1. Introduction**

1. At the 10th Virtual Meeting of the Ibero-American Commission on Judicial Ethics, held on 17 July 2020, it was agreed to draw up an opinion with respect to training in the principles and virtues of judicial ethics. The various international ethical and axiological instruments, the codes of ethics for the different judiciaries and constitutional law itself are all founded on the use of ethical principles as guidelines for standards and conduct.
2. As an example, Article 40 of the Ibero-American Code of Judicial Ethics, on justice and equity, indicates that *'judges should feel bound not only by the text of the legal rules in force but also by the grounds on which they are based'*<sup>1</sup>. On this basis, we should understand that the mere knowledge of legal obligations is insufficient and, instead, a true commitment to these rules is required from legal professionals, and specifically from judges. As Grande Yáñez states, *'a good judge is not one who simply obeys the rules so as not to incur criminal or disciplinary liability, but one who has developed certain character traits which represent judicial virtues'*<sup>2</sup>.
3. Chapter IV of the Ibero-American Code of Judicial Ethics establishes the principle of Knowledge and Skills. This principle is set down as a requisite based on the right of defendants or litigants and society in general to a high-quality service (Article 28), which involves not only the technical knowledge but also the ethical attitudes required for its application (Article 29). Moreover, judges' ongoing training should transcend merely legal aspects and embrace other types of training that favour the satisfactory fulfilment of their duties (Article 30).
4. As Soto and Cárdenas state, *'a person may have a great deal of knowledge, but if they have not allowed the virtues to temper their will, they will not act on their decisions or will be swayed by personal vices'*<sup>3</sup>. The inference here is that society requires people

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<sup>1</sup> Ibero-American Commission on Judicial Ethics (2014). Ibero-American Code of Judicial Ethics. Retrieved from [http://www.poderjudicial.es/stfls/CIEJ/FICHEROS/CIEJ\\_reformado\\_2014.pdf](http://www.poderjudicial.es/stfls/CIEJ/FICHEROS/CIEJ_reformado_2014.pdf), pp. 3-4.

<sup>2</sup> Grande Yáñez, M. (2006). *Ética de las profesiones jurídicas*. Bilbao, Spain: Desclée De Brouwer. p. 128

<sup>3</sup> Soto Pineda, E. and Cárdenas Marroquín, J. (2007). *Ética en las organizaciones*. Mexico: McGraw Hill (pp. 14-15).

who sit in judgement to have not only extensive legal knowledge but also a strong sense of ethics that inspires confidence in both judges and the judicial system in general.

5. As indicated by Laringuet, as well as fair, well-designed institutions - with particular reference to the judiciary - this requires that virtuous people serve as judges, since the inevitable relationship between ethics and law materialises more in people than in the established rules and processes<sup>4</sup>.
6. Atienza proposes that ‘*a good judge*’ is not one who simply fulfils their duty and prevents corruption but rather one who possesses particular virtues, which are characteristics that are acquired and refined through professional practice<sup>5</sup>.
7. Nevertheless, it is not possible to fully guarantee that people who aspire to serve as judges, or those already on the bench, have adequate training in judicial ethics or, worse still, that they hold a firm conviction of the importance of their application in their daily activities, both judicial and extrajudicial. Since Ancient Greek civilisation, we have acknowledged the importance of education in moral virtues as an indispensable prerequisite for satisfactory social coexistence, as well as its primacy in technical and vocational training, and the State’s responsibility to safeguard it<sup>6</sup>.
8. Although this training starts in early childhood, it is a lifelong process, as we are continually exposed to different world views and the influences of other people. This clearly includes the processes involved in university education in law and interaction within the judiciary with other judges, litigants, court users and other people involved in judicial processes. Law schools, professional associations and judicial colleges in Latin America have recognised the importance of incorporating ethics training into their study programmes, whether through courses, specific programmes or as interdisciplinary elements.
9. Ethics training constitutes one of the fundamental elements in the frameworks for upholding the integrity of public institutions<sup>7</sup>. Many of the corresponding training activities have been based on traditional models of knowledge transmission and memorisation. While this may be useful for theoretical knowledge of the principles, the

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<sup>4</sup> Laringuet, G. El aguijón de Aristófanes y la moralidad de los jueces. *DOXA, Cuadernos de Filosofía del Derecho*. 2013; 36. 107-126.

<sup>5</sup> Atienza, M. Virtudes Judiciales. Selección y formación de los jueces en el Estado de Derecho. *Claves de razón práctica*. 1998, 86. 32-42.

<sup>6</sup> Aristotle (1978). *Moral, a Nicómaco [Nicomachean Ethics]*. Spain: Espasa-Calpe.

<sup>7</sup> Jiménez Asensio, R. (2017). *Marcos de integridad institucional y códigos de conducta: encuadre conceptual y algunas buenas prácticas*. Retrieved from <http://laadministracionaldia.inap.es/noticia.asp?id=1506999>

same does not hold for their practical application. Traditional training programmes based on the transmission of ideas and knowledge of the rules has not succeeded in improving the ethical skills of the students involved and, in some cases, it even seems to have had the opposite effect<sup>8</sup>.

10. Some research suggests that when training programmes are focused solely on standards and codes, they may indirectly erode both students' capacity to autonomously establish moral judgements and their sense of empathy and consideration toward others<sup>9</sup>. The ineffectiveness of some training programmes in ethical principles and virtues can be explained by a vague distinction between ethics and deontology, which has produced a marked emphasis on the communication of duties and the consequences of their non-fulfilment, with little attention to the promotion of autonomous engagement consistent with these principles<sup>10</sup>.
11. While training processes which focus on knowledge of the rules are important, whether they are ethical or judicial, they must be complemented with other initiatives that allow judges a better grasp of the principles and virtues required for the exercise of such an important responsibility. These initiatives can range from practical case analyses (ethical dilemmas) to other less traditional approaches, such as the use of artistic resources or sporting activities as complementary means through which to strengthen judges' moral development.
12. In this respect, it is suggested that training programmes for judges, whether in universities or judicial colleges, should include a module designed to address attitudinal aspects. This should focus on the ethical issues attached to the attitudes that can emerge in the exercise of such a specialised and essential function as judging and enforcing judgements. Exercises based on real cases, in which the students are made to play the role of judge (preferably, but not only, as part of a mock hearing), constitute a powerful tool in addressing the issue of attitude. These exercises are aimed at acquiring the self-knowledge that is a necessary preliminary step in controlling the negative attitudes that may emerge under certain circumstances, including authoritarianism, bias, intolerance, lack of firmness, arrogance and procrastination.

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<sup>8</sup> Lind, G. (2020). Moral Competence: What It Means and How Accountant Education Could Foster It. In: Margarida Pinheiro, Alberto Costa, eds. (in press). *Accounting Ethics Education*. Two volumes. London: Routledge.

<sup>9</sup> de Siqueira, J. E. (2012). Del estudio de casos a la narrativa en educación en Bioética. In S. Vidal. *La educación en bioética en América Latina y el Caribe* (pp. 53-68). Montevideo: UNESCO Office Montevideo and Regional Bureau for Science in Latin America and the Caribbean.

<sup>10</sup> Echeverría-Falla C. Educación ética: ¿normas o virtudes? ¿Qué giro debe tomar la enseñanza de la ética en la formación de universitarios solidarios? *Persona y bioética*. 2013; 17 (2). 151-167.

## 2. Virtue as excellence

13. The Ibero-American Code of Judicial Ethics sets out a series of ethical principles related to judicial duties, namely: independence, impartiality, justification, knowledge and skills, justice and equity, institutional responsibility, courtesy, integrity, transparency, professional secrecy, prudence, diligence and professional integrity. Each country's Code of Judicial Ethics may include these or other principles as guidelines for judges' activities, so this is not an exhaustive list but rather the minimum guidelines for the proper performance of judicial duties.
14. In this respect, Codes of Ethics serve as the fundamental bases for training processes in principles for judicial personnel. Kant understood principles as '*propositions which contain a general determination of the will, having under it several practical rules*'<sup>11</sup>. At the same time, Ladrière suggests that principles represent '*the imperative imbuing and, in a sense, defining free will - the imperative of autonomy or, from a teleological standpoint, the postulate of a community of free spirits*'<sup>12</sup>.
15. That being so, the statement of ethical principles makes sense in its practical realisation as guidelines for decisions in specific contexts and situations where justice is implemented. Training in principles and ethical virtues transcends theoretical knowledge, since their practical application involves an assimilation of their meaning as a compass for personal conduct.
16. Decision-making based on universal ethical principles is associated with greater moral development in people, and in this specific case, judges<sup>13</sup>. While the lower stages of moral development correlate to decision-making based on direct consequences for oneself, external oversight and punishments, the higher stages include autonomous respect for the rules as seen through the prism of universal ethical principles<sup>14</sup>.
17. The interpretation and application of legal rules - a task intrinsic to judges' work - requires an advanced level of moral development. Thus, it is vital that the judiciary

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<sup>11</sup> Kant, I. (2002). *Crítica de la razón práctica [Critique of Practical Reason]*. Salamanca: Sígueme (p. 35).

<sup>12</sup> Ladrière, J. (1978). *El reto de la racionalidad. La ciencia y la tecnología frente a las culturas [The Challenge Presented to Cultures by Science and Technology]*. Salamanca: Ediciones Sígueme (p. 125).

<sup>13</sup> Villoria Mendieta, M. and Izquierdo Sánchez, A. (2015). *Ética pública y buen gobierno. Regenerando la democracia y luchando contra la corrupción desde el servicio público*. Madrid: Instituto Nacional de Administración Pública.

<sup>14</sup> Cortina, A. (2013). *¿Para qué sirve realmente la ética?* Spain: Paidós.

ensures that judges reach and maintain this level<sup>15</sup>. Virtues correspond to the assimilation of principles and values within a person's character and, therefore, their behaviour. Consequently, the statement of principles ultimately seeks to cement these virtues in those who embrace them<sup>16</sup>.

18. For Atienza, judicial virtues correspond more to vocation than to technical aspects. Their lodestar is the understanding of the profession's internal goods and they are mediated by prudence<sup>17</sup>.
19. Ethics can be understood as the shaping of the character through the constant practice of principles and the consequent acquisition of virtues<sup>18</sup>. In Greek, the word *arete* signifies excellence and implies the assimilation of a number of virtues<sup>19</sup>; in other words, an excellent person is one who embodies the virtues. Transposing this to the professional arena and, more specifically, the judiciary, an excellent judge is one who embodies the specific virtues related to the administration of justice, derived from the principles of judicial ethics.
20. As Adela Cortina states: 'As opposed to the "bureaucratic ethos" of one who adheres to the legal minimum, "professional ethos" calls for "excellence"'<sup>20</sup>.

### **3. Strategies for training in judicial principles and virtues**

21. Judges should be aware of the ethical and legal standards related to the proper exercise of their duties. The ethical training of judges should incorporate, in the first place, knowledge of the various national and international axiological instruments and the principles on which they are founded.
22. This training should include examples of the practical application of these principles in specific situations, in both the professional and the personal arena. To the extent possible, they should take advantage of the technological resources available for the processes of judicial training. In the same way, training processes should incorporate strategies that allow their results or their overall impact to be measured.

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<sup>15</sup> León Hernández, R. (2013). El desarrollo moral de los jueces y su percepción de la justicia. *Criterio y Conducta*, Revista Semestral del Instituto de Investigaciones Jurisprudenciales y de Promoción y Difusión de la Ética Judicial (14), 137-160.

<sup>16</sup> Aranguren, J. L. L. (1972). *Ética*. Spain: Ediciones Castilla.

<sup>17</sup> Atienza, M. Virtudes Judiciales. Selección y formación de los jueces en el Estado de Derecho. *Claves de razón práctica*. 1998, 86. 32-42.

<sup>18</sup> Aranguren, J. L. L. (2010). *Filosofía y vida intelectual. Textos fundamentales*. Madrid: Trotta-UNED.

<sup>19</sup> Etxeberría, X. (2005). *Temas básicos de ética*. Bilbao: Desclée De Brouwer.

<sup>20</sup> Cortina, Adela (2013). *¿Para qué sirve realmente la ética?* Barcelona: Paidós (p. 139).

23. Training programmes and activities for judicial personnel - even when these are related to purely technical, administrative or judicial aspects and not directly related to ethics - should also incorporate moral evaluation on the part of the designers or implementers of the training provision. All educational processes involve a world view, ways of facing reality and exercising autonomy<sup>21</sup>, and this entails a conscious choice of ethical perspective for training processes, in the light of the principles of judicial ethics.
24. The different legal training programmes can also include interdisciplinary content related to the application of principles of judicial ethics in specific situations. Discussion of ethical dilemmas and case analyses, applied to the work of the courts, can foster greater understanding of the principles and their practical application. It can prepare judges for the scenarios that they will encounter in real life, and thereby enhance their moral competence<sup>22</sup>.
25. Mock proceedings or specific situations which require putting the principles of judicial ethics into practice may also be a good way to achieve the outcomes indicated in this section. People beginning their service in the judiciary can be assigned a judge as a mentor or advisor to offer initial guidance. These mentors should embody good examples of the practice of judicial ethics, since the use of role models and exemplary figures can also have an educational impact<sup>23</sup>.

#### **4. Personal and working life**

26. Training in principles and virtues must encompass the relationship between personal life, social context and the workplace. Judges must understand how the actions that they take in their private lives may have public significance with repercussions on their working lives, as well as the public image of the institution and the administration of justice in general.
27. The implementation of principles must be a constant in judges' conduct, even outside the working day and the courts.

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<sup>21</sup> González, E. (June, 2013). Formación ética de los profesionales. Forjando el interés desde la razón y la emoción. *Revista Internacional de Organizaciones*, (10), 21-40.

<sup>22</sup> Lind, G. (2020). Moral Competence: What It Means and How Accountant Education Could Foster It. In: Margarida Pinheiro, Alberto Costa, eds. (in press). *Accounting Ethics Education*. Two volumes. London: Routledge.

<sup>23</sup> Burón Orejas, J. (2010). *Psicología y conciencia moral*. Spain: Sal Terrae.

28. Even when a judge's right to privacy is recognised and deserved, they should understand that any act or opinion which is known to the public may be linked to their professional competence. Consequently, their personal, family and social relationships must also be guided by the principles of judicial ethics.

## **5. Artistic activities**

29. Moral development and the acquisition of virtues can be fostered through other types of activities, such as reading narrative literature (novels, short stories and biographies), which teaches readers to put themselves in someone else's place (developing empathy) and share their experiences<sup>24</sup>. The use of these types of texts can be developed as a strategy to supplement the processes of training in ethics.

30. The above is not restricted to literary works directly related to justice; opening up reading to include other alternatives allows understanding of ways of life or professions different from those of the legal professions and broadens the world view of those who work in the judiciary. Reading can be used to complement other training processes in judicial ethics, where it is possible to analyse the correlation between texts and professional activities, identify prejudices and understand contexts and experience, which allows for a better understanding of the matters on which judgements need to be made.

31. In addition, reading groups can be organised independently of other training processes, which may encourage deeper understanding of the aspects referred to above. Film constitutes another type of narrative that fosters the critical judgement required for moral interaction, and film discussion groups can help enhance the capacity for judgement and sensitivity required for evaluating moral choices<sup>25</sup>. The screening of films (whether in full or in part), shorts or programme episodes can reinforce and exemplify the theoretical aspects reviewed and discussed during the judicial training processes.

32. In this respect, the ongoing practice of artistic activities (including drawing, painting, theatre and dance) promotes one's capacity to grasp and reproduce order, proportion

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<sup>24</sup> Brussino, S. (2012). La deliberación como estrategia educativa en Bioética. In S. Vidal. *La educación en bioética en América Latina y el Caribe* (pp. 37-52). Montevideo: UNESCO Office Montevideo and Regional Bureau for Science in Latin America and the Caribbean.

<sup>25</sup> Vidal, S. (2012). Nuevas y viejas preguntas en la educación en Bioética. In S. Vidal. *La educación en bioética en América Latina y el Caribe* (pp. 15-36). Montevideo: UNESCO Office Montevideo and Regional Bureau for Science in Latin America and the Caribbean.



and harmony, as required elements in artistic practice, and this can be extrapolated to other facets of daily life and work, resulting in more orderly ideas, more proportionate decisions and a more harmonious life. At the same time, music practice encourages the development of social and intellectual skills and helps character building, related to moral development<sup>26</sup>.

33. In general terms, art improves capacity for judgement and sensitivity related to moral decision-making<sup>27</sup>. The judiciary could encourage judges' participation in artistic groups or, at least, their appreciation of the arts, as a complementary measure alongside academic training.

## **6. Physical activities and sports**

34. As well as promoting physical health, the practice of sport strengthens discipline and, in the case of team sports, the ability to work in a group.
35. Nevertheless, the emphasis on competition is not as well suited to the promotion of moral development as the element of collaboration with others to achieve common goals.
36. The promotion of organised sporting activities - which can be utilised to work on topics related to confidence in one's workmates, interdependence and collaboration - can function as a strategy for supporting the assimilation of virtues among judicial personnel, not only for judges but also their respective working teams.
37. In the same way, the incorporation of physical and recreational activities into ordinary training processes can promote similar results and facilitate the assimilation of theoretical content and its practical implementation.
38. Some practices that incorporate physical activities (for example, adventure circuits and rallies) can be adapted and used for these purposes.

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<sup>26</sup> Giordanelli, M. (2011). *La música en la educación, herramienta fundamental para la formación integral*. Retrieved from [https://www.academia.edu/2551897/LA\\_M%C3%9ASICA\\_EN\\_LA\\_EDUCACI%C3%93N\\_HERRAMIENTA\\_FUNDAMENTAL\\_PARA\\_LA\\_FORMACI%C3%93N\\_INTEGRAL](https://www.academia.edu/2551897/LA_M%C3%9ASICA_EN_LA_EDUCACI%C3%93N_HERRAMIENTA_FUNDAMENTAL_PARA_LA_FORMACI%C3%93N_INTEGRAL)

<sup>27</sup> Nussbaum, M. (2005), cited in Vidal, S. (2012). Nuevas y viejas preguntas en la educación en Bioética. In S. Vidal. *La educación en bioética en América Latina y el Caribe* (pp. 15-36). Montevideo: UNESCO Office Montevideo and Regional Bureau for Science in Latin America and the Caribbean.



## **7. Comprehensive training**

39. In keeping with the different strategies outlined above, it is important to recognise that training in judicial principles and virtues is based on the consideration of a judge as a whole person, with various aspirations, interests and ways of learning.
40. The simultaneous use of different strategies for training in ethics can produce better results for the incorporation of virtues in practice. As judges' time is limited, training activities may be interspersed with communication and dissemination processes that emphasise the principles and their practical application, in such a way that they function as reminders and reinforcement of training activities.
41. Even so, it is important to remember that training in ethics is an open and ongoing process<sup>28</sup>. A single learning activity at the beginning or during a judge's career is not sufficient; instead, regular training is required, to serve as a kind of calibration that allows judges to reinforce or maintain the ethical principles intrinsic to their professional practice. To this end, the judiciary or judicial colleges could maintain a register of the training processes in which judges participate, with the aim of encouraging them to undertake training on a regular basis.
42. Participation in this type of activity could be used as a factor in the corresponding performance appraisals of judges and other court personnel.

## **8. Recommendations for training in judicial principles and virtues**

43. In order to ensure effective training in ethics for judges and judicial personnel, consideration should be given to the following recommendations:
- I. The Ibero-American Code of Judicial Ethics and each country's code of conduct should be used as the bases for training in principles and virtues for judicial personnel.
  - II. In addition to judges, training in ethics should encompass all judicial, administrative, technical and support personnel involved in the work of administering justice.

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<sup>28</sup> Gómez, V. and Royo, P. (December, 2012). Ética cívica: integrando la experiencia vivida. *Calidad en la educación*, (37), 205-221.

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- III. Training processes should include both theoretical knowledge of ethical principles and their practical implications in judicial functions.
- IV. Academic and technical training should be complemented with additional tools such as case analyses, ethical dilemmas and mock trials, representing situations that arise as part of the work of the courts.
- V. Supervised practice and the assignment of mentors of recognised moral standing to persons entering the judiciary can serve as guidelines and examples of the practice of principles of judicial ethics.
- VI. Some complementary strategies can be used simultaneously with or subsequent to training processes as a means of maintaining or enhancing judges' capacity for moral judgement. (Examples include film discussion groups, literature, and artistic and sporting activities.)
- VII. Training in the principles and virtues of judicial ethics should form part of judges' initial training processes, and regular training should be carried out to serve as reinforcement and as a realignment strategy when necessary.
- VIII. Training processes adapted to the practical implications of the principles in different judicial areas are recommended.
- IX. Communication campaigns can be used as a strategy for reinforcing the content covered in training courses to ensure that it is maintained over the long term.
- X. All training processes should include the means with which to measure their results or impact.