

## **Thirteenth Opinion, of 4 December 2020, of the Ibero-American Commission on Judicial Ethics on the ethical dimension of relationships between judges in collegial bodies. Reporting judge: Commissioner Eduardo D. Fernández Mendía**

### **I. 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 the ethical dimension of relationships between judges in collegial bodies.
2. The Ibero-American Judicial Summit reiterated the need to ‘implement and strengthen the institutional processes necessary to effectively apply the values and principles of transparency, integrity and accountability to the administration of justice, ensuring maximal public disclosure of its actions and decisions as a democratic instrument, strengthening citizens’ confidence in public institutions with respect to potentially affected fundamental rights’.<sup>1</sup>
3. These principles are embedded in the 13 principles of the Ibero-American Code of Judicial Ethics and underpin the legitimacy of the functioning of the judiciary, at both individual and collegial level, and within the spheres of both jurisdiction and governance.
4. The *collegial court* as a jurisdictional body is seen in multiple forms in Ibero-America, in some cases as a body with other powers of governance or supervision, and in others working jointly with other constitutional bodies. In some cases, it springs from continental European roots, while in others, it follows the US model.<sup>2</sup>
5. There is an undeniable European influence, carried through Spain and Portugal, on Ibero-American judiciaries. Institutions from the old continent were replicated in what were termed the Judicial bodies of the Indies, with ordinary courts (the Council of the Indies, the *Audiencias*, the Provincial Governors, the Prosecutor’s Office and the Higher Justices), lower courts (mayors and colonial councils) and special courts. One distinctive feature of judges’ proceedings was the systematic application of the principles of ‘*plain style, known truth and good faith*’, solid principles that still hold implicit force alongside others which have arisen as a result of legal and procedural development.
6. In Brazil, especially after the early nineteenth-century installation of the Portuguese court in America following the Napoleonic invasion, the colonial judicial bodies underwent substantial changes until the time of independence.

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<sup>1</sup> 16th Ibero-American Judicial Summit, *Declaration of Buenos Aires*, 25-27 April 2012, Section 22.

<sup>2</sup> Enrique M. Falcón, “La función política y los tribunales superiores” [‘Political Function and the Higher Courts’], en Berizonce, RO, Hitters, JC, y Oteiza, E., *El Papel de los Tribunales Superiores [The Role of the Higher Courts]*, Rubinzal Culzoni Editores, Argentina, 2006, pp. 19-72.

7. In Argentina, the federal Supreme Court and the lower courts of various jurisdictions are collegial or multiple-member in structure. At provincial level, the Superior Courts and the sentencing and review courts have seen their powers diversified, thanks to the requirements of conventional or constitutional guarantees, and of judicial organisation.
8. In order to frame the issue that this opinion seeks to resolve within an appropriate institutional context and to enable proposals to be made with a view to strengthening and improving relationships between judges in collegial bodies from an ethical standpoint, we will review the applicable national and international ethical principles and the impacts of the Ibero-American Code of Judicial Ethics.

## **II. National and international ethical principles applicable to collegiality in the courts**

9. As a preliminary step, it is important to reflect on the striking reiteration of ethical principles and values within the different regulatory systems. This clear repetition does not presuppose a lack of attention or regulatory technique but rather an emphatic reaffirmation of certain priorities on which different judicial and legislative authorities have coincided, in recent history and across the diversity of geographical areas and real-world situations. It can be argued that fundamental rights have no effect if the values of jurisprudence and ethics are not ingrained in those who must guarantee them. This is an inseparable binary relationship in a legitimate judiciary, each discipline with its specific qualities and differences, yet united in the constant and permanent objective of giving each their due.
10. The individual ethics of each judicial officer will always maintain an inviolable dignity, provided a preferential anthropological choice has been made to this end, but this dignity is intrinsic to and goes hand-in-hand with a collegial relationship, in the performance of duties and the joint issuance of a just and appropriate result.
11. Given the abundance of regulations relating to ethical conduct in the judiciary, we will review a selection which, due to their importance, point the way with varying degrees of relevance and potential.
12. The *Declaration of the Rights of Man and of the Citizen*, a document of the French Revolution, states in Article 2 that: ‘The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression’. This is a major premise shared by the judiciary, which has spread far and wide and which we will be underlining within the scope of our task, without, of course, exhausting all its expressions.
13. Point 8 of the *Basic Principles on the Independence of the Judiciary*, adopted in 1985 within the framework of the United Nations, states: ‘In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in

exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary'. Point 10, under the heading 'Competence, Selection and Training', stipulates: 'Persons selected for judicial office shall be individuals of integrity and ability'.

14. The *Bangalore Principles of Judicial Conduct* (2002) state that 'public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society'. These *Principles*, therefore, consider that 'it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system'. Finally, this document on judicial ethics, adopted within a universal framework, states that 'the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country'.
15. With reference to independence, the *Bangalore Principles* state: 'Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects'. In a similar vein, subparagraph 1.4 indicates: 'In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently'.
16. With respect to impartiality, the *Bangalore Principles* state: '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'.
17. With respect to the value of equality, the *Bangalore Principles* stipulate: 'A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and **judicial colleagues**, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties'.
18. On judges' competence and diligence, subparagraph 6.6 of the *Bangalore Principles* states: 'A judge shall maintain order and decorum in all proceedings before the court and be **patient, dignified and courteous** in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control'.
19. The *Universal Charter of the Judge*, adopted by the International Association of Judges in 1999 and updated in 2017, states in the final paragraph of Article 2.1: 'The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the

administration of the judiciary’. The second and third paragraphs of Article 6.2 stipulate: ‘The judge must perform his or her duties with restraint and attention to the dignity of the court and of all persons involved. The judge must refrain from any behaviour, action or expression of a kind effectively to affect confidence in his/her impartiality and independence’.

20. The *Code of Conduct for Members and former Members of the Court of Justice of the European Union*, in force as of 1 January 2017, enshrines the duty of loyalty to the institution and advises that members make use of the services of officials and other servants of the institution in a respectful manner. Article 7, on discretion, stipulates that members shall preserve the secrecy of deliberations, comply with the duty of discretion in dealing with judicial and administrative matters, and act and express themselves with the restraint that their office requires.
21. In 2016, the *Consultative Council of European Judges* (CCJE) adopted Opinion No 19 on the role of court presidents, which sets out the specific tasks of court presidents to represent the court and fellow judges, to ensure the effective functioning of the court, thus enhancing its service to society, and to perform jurisdictional functions (paragraph 6). ‘In performing their tasks, court presidents protect the independence and impartiality of the court and of the individual judges, and must act at all times as guardians of these values and principles’. This Opinion also states that ‘court presidents, acting as guardians of the court’s independence, impartiality and efficiency, should themselves respect the internal independence of judges within their courts’. Finally, the Consultative Council of European Judges concludes: ‘Any managerial model in courts must facilitate the better administration of justice and not be an objective in itself. The court presidents should never engage in any actions or activities which may undermine judicial independence and impartiality’.
22. In the Americas, important reference points can be found in the ethical codes of Guatemala, Argentina, Puerto Rico, Mexico and Brazil.<sup>3</sup>
23. Article 6 of the Republic of Guatemala’s *Ethical Code for the Judicial Body* concerns moderation and self-criticism. It states: ‘Those who administer justice should use the resources made available to them with moderation, bearing in mind their personal responsibility for their actions. They should also ensure that their own convictions are subject to constant scrutiny, with absolute respect for that of their colleagues, when they are members of collegial courts’. Article 9, on the duty of secrecy, underlines that judges who are members of collegial bodies should ensure the secrecy of the court’s deliberations. Article 15, on personal relationships, states that ‘administrators of justice should maintain the best personal and cooperative relationships with each other

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<sup>3</sup> Stefanie Ricarda Roos and Jan Woischnik, *Códigos de Ética Judicial. Un estudio de derecho comparado con recomendaciones para los países latinoamericanos [Codes of Judicial Ethics: a comparative study of law with recommendations for Latin American countries]*, Fundación Konrad Adenauer, Montevideo, 2005.

and with their support staff, in order to achieve the most efficient administration of justice'. Article 17, however, refers to the reporting of improper actions in the following terms: 'when the administrator of justice or any other employee is aware of an improper action by a colleague or lawyer, they should instigate the appropriate procedures'. Finally, the Code enshrines the special duty of those exercising jurisdictional power to ensure dignity and due respect for the court.

24. In Argentina, the federal system of government entails many different judicial ethical regulations. Of particular note, on the one hand, is the *Code of Ethics for Judges and Officers of the Judiciary of Córdoba*, whose Article 3.12 states, in the final paragraph: 'In collegial courts, each judge contributes with the others to a coordinated and harmonious action, ensuring that the plurality of contributions does not undermine the speed of the actions and decisions that are incumbent upon them'. Article 4, on decent treatment, states: 'Judicial service requires that judges and officers show respect, courtesy and cordiality, and that they communicate in this way with lawyers, other officers of justice, defendants and litigants, in their dealings with whom they should be diligent when they demand explanations and clarifications that do not contravene the rules in force. Decent treatment extends to their relationship with staff, and the staff's relationship with others'. On the other hand, the *Code of Judicial Ethics of the Province of Santa Fe* states in Article 6.4: 'Judges must maintain a well-disposed and respectful attitude toward colleagues, members of the judiciary, officers of justice, and litigants and defendants'.
25. In Puerto Rico, Canon IV of the *Supreme Court Canons of Judicial Ethics* stipulates: 'Judges should maintain the best relationships and cooperate with each other in order to achieve the most efficient administration of justice. Their conduct should be framed within a context of mutual respect, cordiality and professional collaboration, irrespective of the differences in their relative positions within the judiciary. They shall guard against making unfounded or unnecessary criticism that might diminish the standing of their fellow judges. They shall ensure that the conduct of these judges aligns with the canons in both their personal behaviour and the performance of their judicial duties'. Canon VIII stipulates that judges 'should avoid any activity that would undermine the dignity of their position as a judge or that would cause undesirable notoriety'. Finally, Canon XXIII states: 'Judges should avoid any conduct or action that might give grounds for the belief that they exert or intend to exert undue influence on the intentions of another judge in the consideration of a pending or future case'.<sup>4</sup>
26. The introduction and preamble to the *Code of Ethics for the Judiciary of the Mexican Federation* states that 'it seeks to recognise judicial ethics as the path trodden daily by

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<sup>4</sup> Sigfrido Steidel Figueroa, *Ética para juristas: Ética judicial y responsabilidad disciplinaria [Ethics for Jurists: Judicial Ethics and Disciplinary Responsibility]*, Ediciones Situm, San Juan, Puerto Rico, 2019.

public servants of the Federation's Judiciary, and to be a document which is not only informative but formative, to the extent that its repeated practice becomes second nature to judges and in such a way that it brings lifelong content, clarity and systematisation to these concepts, because knowledge of ethics is not innate but rather acquired; the only innate aspect is the aptitude to acquire it'. In Chapter III, on objectivity, subparagraph 3.2 states: 'When making their decisions, whether individually or jointly, they shall always seek the implementation of the law over any personal benefit or advantage'. Meanwhile, subparagraph 3.3 states: 'If they are a member of a collegial court, they should treat their peers with respect, listen to their arguments with attention and openness to understanding, and debate with reason and tolerance'. Section 3.4 of the *Mexican Code of Ethics* advises that judges: 'endeavour to act calmly and proportionately, in order that their decisions are free from misgivings and prejudice'. Finally, Chapter IV, on professionalism, includes the following defining subheading: 'It is the willingness to perform jurisdictional duties responsibly and seriously, with the relevant capacity and application'. It continues: 'Judges, therefore: [...] 4.17. Will refrain from giving opinions about the behaviour of their peers. 4.18. Fulfil their duties in an exemplary manner in order that the public servants under their responsibility do so in the corresponding manner'. Article 4.19 underlines the duty to 'earnestly endeavour that their actions reflect the credibility and confidence inherent in their investiture'.

27. In the Brazilian legal arena, it is instructive to note the reflections of Judge Passos de Freitas, organised into the 'Ten Commandments for Judges'.<sup>5</sup> Point 4 proposes that judges: 'Keep in mind that their words and attitudes are being observed by everyone and that they convey explicit and implicit messages that may enhance or impair Justice. Public criticism of other judges from any court at any level, or authorities of other powers, should therefore be avoided, as attitudes which are not constructive and which may result in a public response of equal or greater strength'. In accordance with point 5, in the opinion of the Brazilian judge, it is essential to: 'Keep vanity confined within the limits of the tolerable, avoiding the pursuit of honours, medals, depictions in institutional newspapers, revenge on those who have been presumed to treat them inappropriately, long self-glorifying speeches and the flattery of sycophants, being aware that this will all fade away the moment their successor is installed'.

### **III. The impact of the Ibero-American Code of Judicial Ethics on collegial judicial bodies**

28. In their drafting of the Ibero-American Code of Judicial Ethics, the two authors, Manuel Atienza and Rodolfo Vigo, drew on and took into account both the conduct of

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<sup>5</sup> Vladimir Passos de Freitas, "Los diez mandamientos del juez administrador" ['The Ten Commandments for Administrative Judges'], available at <https://foresjusticia.org/wp-content/uploads/2016/02/juez-administrador-ibrajus.pdf> <last access: 16/11/2020>.

individual judges and that of judges in collegial bodies, without prejudice to observing greater coverage of the first case.<sup>6</sup>

29. In the Ibero-American Code of Judicial Ethics, independence, impartiality and motivation, in particular, are linked to the collegial composition of judicial bodies. With respect to independence, reference is made in Article 7 to a duty under which ‘ethics require not only that judges be independent but that they also refrain from interfering with the independence of their colleagues’. In a similar vein, Article 3 stipulates: ‘Through their attitudes and behaviour, judges should show that they are not influenced, either directly or indirectly, by any other public or private power, whether within or outside the courts’. With respect to impartiality, Article 17 states: ‘Impartiality of opinion obliges judges to form rigorous habits of intellectual honesty and self-criticism’. These qualities are the sine qua non of the functioning of judicial collegiality.
30. Finally, with reference to the statement of grounds, Article 26 of the Ibero-American Code stipulates: ‘In collegial courts, deliberations should be made and statements of grounds should be expressed in respectful terms, within the margins of good faith. The right of each judge to disagree with the majority opinion must be exercised with restraint’. There is an exhortation here to resist the temptations of inappropriate and irrelevant individuality, with the exception of legitimate and reasonable grounds, showing prudence as an expression of self-control in decision-making.
31. At the same time, it is important to draw attention to an oft-repeated and cross-cutting concept within the catalogue of principles enshrined in the Ibero-American Code of Judicial Ethics related to *attitude*, as a mind-set manifested in some way. Here, one sees the binary effect of the conjunction of intelligence and intent. The overriding importance of attitude can be seen in the fact that it is included in the Code in Article 3 on independence; Articles 29, 31 and 33 on knowledge and skills; Article 43 on institutional responsibility; Article 52 on courtesy; Article 60 on transparency; Articles 69 and 70 on prudence; and, finally, Article 78 on diligence.
32. The Code expresses it as a *collegial concern* in Articles 32 and 33, related to training and skills. Article 32 states: ‘Judges should, to the extent possible, facilitate and promote the training of other members of the judicial office’. By virtue of Article 33: ‘Judges should maintain an attitude of active collaboration in all activities that contribute to judicial training’. It can be seen in the Code that this is an attitudinal

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<sup>6</sup> Marcus Tullius Cicero, *De Officiis (On Duties)*, I:124, English translation by Walter Miller, London Heinemann, 1913, p. 127, available at <https://archive.org/details/deofficiiswithen00ciceuoft/page/2/mode/2up>: ‘It is, then, peculiarly the place of a magistrate to bear in mind that he represents the state and that it is his duty to uphold its honour and its dignity, to enforce the law, to dispense to all their constitutional rights, and to remember that all this has been committed to him as a sacred trust. [Est igitur proprium munus magistratus intellegere se gerere personam civitatis debereque eius dignitatem et decus sustinere, servare leges, iura describere, ea fidei suae commissa meminisse.]’.

mandate, with the aim of group work driven by the judge or judges of the court, on the necessary expansion of training on and knowledge of technical and ethical skills for the correct application of the law.

33. Metaphorically, then, the collegiality of a court is nothing other than the chaining together of judges as links ingrained with the principles proposed by the Code. Nonetheless, a chain is only as strong as its weakest link, as the Scottish philosopher Thomas Reid wisely warned in the 18th century. If a collegial body does not behave and function ethically with a minimum of shared standards, its dynamism, effectiveness and functional legitimacy will be erratic and spasmodic, with the consequent loss of confidence *ad intra* and *ad extra*.
34. With respect to institutional responsibility, almost every article of the Ibero-American Code of Judicial Ethics reveals the fundamental importance of collegiality, which usually entails an *affectio societatis* similar to that of corporations or associations. The most important attitude with respect to collegiality is included in Article 42, which states: ‘An institutionally responsible judge is one who, in addition to fulfilling their specific individual obligations, is actively engaged in the proper functioning of the entire judicial system’.
35. With reference to courtesy, Article 49 of the Code stipulates: ‘Courtesy is the way to externalize the respect and consideration that judges owe to their colleagues, other members of the judicial office...’ In this regard, Judge Luis F. Lozano, former Executive Secretary of this Commission, indicates: ‘Courtesy does not fulfil the same task for each category listed in the rule. With respect to colleagues, it facilitates good relationships. Between members of collegial courts, specifically, it facilitates productive dialogue and useful deliberation between judges, camaraderie and exchange of ideas, and in all cases, the best image of justice, which is so badly damaged by the negative perception caused by the almost inevitable exposure of any lack of consideration shown by one judge toward another. To what public prestige can a judiciary aspire when its members do not respect each other?’<sup>7</sup>
36. Certainly, ethics and deontology are taken to another level when incidents occur which are essentially analysable by other disciplines, such as psychology, social psychology, sociology, anthropology and, finally, under a multidisciplinary lens. Nevertheless, if the judges concerned have internalised a solid and well-balanced axiological system, ethical principles become an instrument for guidance, discernment, and prudent and reasonable observation, enabling them to confidently navigate what are often troubled waters.

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<sup>7</sup> Luis F. Lozano, "Cortesía", in Fernando Castro Caballero (ed.), *Código Iberoamericano de Ética Judicial Comentado [Annotated Ibero-American Code of Judicial Ethics]*, Consejo Superior de la Judicatura, Bogotá, 2019, pp. 77-78.



37. Our Code repeatedly refers to the **reasonable observer** as an interpreter of the meaning and scope of the ethical principle, such as the attitude of the judge under scrutiny on a specific issue. Commissioner Maggi Ducommun refers to this concept when analysing the principle of professional integrity: ‘This article refers to the “reasonable observer”, a figure to which the Model Code repeatedly refers and which was drawn from the United Nations Bangalore Principles of Judicial Conduct. This model, as well as incorporating an element of social control over judges’ behaviour, enables us to overcome the lack of precision in an ethical standard, since this, of course, cannot always be required to define a censured action or omission with the same precision that legal rules classify criminal behaviour...’. The Chilean judge and commissioner subsequently states: ‘the specific situation that may be reproachable in each case must be evaluated in the eyes of a “reasonable observer”, with wisdom and prudence, according to logic and common sense’. Dr. Ducommun concludes: ‘Notwithstanding the strictness of the demands analysed, by incorporating society’s control through the figure of the “reasonable observer”, the Code introduces an important qualifying factor, demonstrating that the rigour of the behavioural rules imposed on judges is neither absolute nor irrational, since all conduct subject to public scrutiny will also be subject to civic evaluation, according to sensible and considered judgement’.<sup>8</sup>
38. With respect to integrity, Article 55 of the Code stipulates: ‘Judges should be aware that the exercise of the jurisdictional function entails demands that do not apply to the rest of their fellow citizens’. A judge may clearly join or participate in other cultural, social, and service-based activities. At the same time, however, the requirements for performing their judicial duties are those governed by the Code, and these will also surely leave an attitudinal imprint on these other activities.
39. With respect to transparency, Article 56 indicates a dual requirement, for both individual judges and collegial judges, which is reiterated in Article 60 as follows: ‘Judges should avoid conduct or attitudes that might be considered an unjustified or excessive pursuit of social recognition’. It is a mark of this *liquid modernity*, in the words of the sociologist Zygmunt Bauman, that some of our fellow citizens, including those in the judicial sphere, are obsessed with a kind of existential pantheism, whose mythology idolises the demigods of a modern Olympus, such as prestige, self-reference, narcissism and devotion to self-image, with a peremptory need to be present in environments where they can be recognised, heard, applauded and praised.
40. With respect to professional secrecy, Article 63 refers essentially to collegiality: ‘Judges who are members of collegial bodies should ensure the secrecy of the court’s deliberations, barring the exceptions provided for in the existing legal rules and in accordance with the decisions issued on the public disclosure of their sessions,

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<sup>8</sup> Rosa María Maggi Ducommun, "Honestidad profesional", in *Código Iberoamericano de Ética Judicial Comentado*, op. cit., pp. 127-129.

maintaining a fair balance between professional secrecy and the principle of transparency’.

41. With respect to prudence, Article 70 is central to a constantly developing collegiality and an awareness of group dynamics: ‘Judges should maintain an open and patient attitude in order to hear or recognise new arguments or criticisms with respect to confirming or rectifying assumed standpoints or criteria’. This mental, attitudinal and evaluative openness is vital for joint jurisdictional work, such as joint management of the administration and governance of the judiciary, with differing competences, with respect to the social complexity that seeks a response to its conflicts.
42. Finally, in defining professional integrity, we should underline the provisions of Article 81: ‘Judges should behave in such a way that no reasonable observer could consider that they make unlawful, irregular or improper use of the work of other members of the judicial office’.
43. In short, the Ibero-American Code of Judicial Ethics offers a response to the challenges entailed by the collegiality of courts, irrespective of their powers or hierarchy. The system of rules and the contribution of the reasonable observer, in principle, provide the security of regulatory eligibility in responding to the ever-shifting complexities presented by the collegial exercise of jurisdiction.

#### **IV. Proposals for the ethical strengthening of relationships between judges in collegial bodies**

44. Judicial collegiality serves an exemplary role as a guide and an obligatory reference point for the other courts, whose functional integrity is the responsibility of each of its members.
45. It is, therefore, important to underline the individual virtues of the judges who make up the collegial bodies, without which the correct functioning of collegial judicial bodies would be very difficult to achieve. These include respect for others and tolerance of their legal positions (basic aspects needed in deliberations, which are not always upheld by all members), the concept of the ‘chain’ in which all links must be equally strong (to ensure that work is not delayed by any member and that all strive in the same way to make a significant contribution to the final outcome of the joint undertaking), and the effort to overcome any difficulties in relationships between members of the body, in fulfilment of the implicit duty of cordiality and decent treatment, with the understanding that this contributes to the best functioning of the body and the best service of justice.
46. Nonetheless, while solidarity and esprit de corps should be engaged in as part of a sense of belonging to a collegial judicial body, the independence of each member of the body cannot be undermined.

47. The cohesion of the court is a requirement of the State rather than the judicial officer, within a structure in which each judge has a relevant and equivalent institutional task. If the political design of the State assigned the collegial courts an equal footing in the hierarchy of responsibilities and powers, any individual or unilateral attitude of undue pre-eminence would constitute a serious conceptual distortion and a flagrant betrayal of the rule of law.
48. Judicial collegiality is imposed for the optimisation of judicial functioning based on the magnanimous contribution of each judge, where the search for a solution to a conflict has the reassurance of better empirical, technical and legal convergence and a comprehensive worldview, in a productive juxtaposition that generates efficiency and strength. It is undeniable that excellent functioning in the judiciary is a gift, whether individual or collegial, that brings genuine institutional prestige; however, this prestige should be a gift for the public institutions of the State rather than for personal vanity.
49. In this dynamic, constantly developing collegiality, personal dissent on any aspect must be voiced in honour of truth and transparency, and not as a manifestation of egocentric individuality, which is incompatible with judicial propriety. The human linking of judges is valuable in terms of its service to citizens, as opposed to spurious constructions of power or other aspects alien to the institutional purpose of the *collegium*.
50. Collaboration, the inherent and consubstantial duty of collegiality, does not collapse nor diminish as a result of personal differences; while judges are appointed in full expectation of the daily challenges posed by independent and impartial diversity, they are teleologically united in integrity.
51. Collegiality is the organisational linking together of judges in pursuit of social peace through the fair composition of the courts, and the strength of the court is measured according to the individual contribution of each judge. If a judge's legitimate merit or individual contribution is not useful to the whole court, joint reflection on the dynamics of interpersonal roles will be necessary to ensure that each individual contribution adds to the fruits of the whole.
52. It is paradoxical that a judge can sit in judgement over different types of individual or collective responsibilities under litigation, and then - on unjustified grounds and with a lack of nobility of spirit - unilaterally refuse to accept their institutional responsibilities. The constitutional State under the rule of law seeks that the collegial relationship is a domain of ethical attitudes, with a mandate for optimisation and excellence, and a rejection of ambiguity and abdication of ethical duty.
53. Egotistical speculation or any kind of illicit manipulation is improper conduct that impoverishes the judiciary and justifies a critical perception of beleaguered judicial standing. Opening the door to sectarian politics or those of any other nature alien to



the design of the court also blows open the window which lets out trust, independence and other fundamental ethical principles.

- 54.** Deliberation is central to the collegial body, as a platform for both centripetal and centrifugal argument, under the shining light of probity, loyalty and good faith, and in the endeavour to reach a just and fair decision. In short, individual ethics within a collegial group must be the clear expression of the principles enshrined in the Ibero-American Code of Judicial Ethics, manifested in the performance of all judicial duties.