

## **Sixteenth opinion, of 23 September 2021, of the Ibero-American Commission on Judicial Ethics on disciplinary action and ethics in the oversight of judges' behaviour. Reporting judge: Commissioner Luis Porfirio Sánchez Rodríguez**

### **I. Introduction**

1. Judges should be independent and impartial in the exercise of their duties (Chapters I and II of the Ibero-American Code of Judicial Ethics), be subject to the respective law or legal order, be legally accountable from a moral or ethical standpoint, and meet the minimum behavioural requirements. As a historical precedent, when the Constitution of the United States of America (adopted in 1787) established the judiciary, it did so stipulating that judges would hold their seats provided that they upheld good conduct (“*The Judges, Both of the supreme and inferior Courts, shall hold their Offices during good Behavior*”).
2. Every court of justice comprises judges selected on their merits; they must meet the requirements for technical competence and moral integrity in order to perform the judicial functions required by the rule of law. Judges’ regime of legal and ethical responsibilities must be compatible with their independence, impartiality and integrity. Over recent years, the European Court of Justice has endeavoured to ensure that judicial independence is not breached in its various member countries and has underscored the need to establish a disciplinary regime which provides “*the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions*”<sup>1</sup>.
3. This very guarantee is enshrined in Article 8 of the American Convention on Human Rights (Pact of San José), with respect to which the Inter-American Court of Human Rights has indicated that it “*considers that one of the principal purposes of the separation of public powers is to guarantee the independence of judges and, to this end, the different political systems have conceived strict procedures for both their appointment and removal*”<sup>2</sup>.
4. At its thirteenth virtual meeting, on 12 March 2021, the Ibero-American Commission on Judicial Ethics agreed to draw up an opinion on disciplinary action and ethics in the oversight of judges’ behaviour. The rationale behind this task lies in the fact that it is not always easy to distinguish between legal and ethical responsibilities, whether because the ethical dimension is completely disregarded or because legal and ethical concepts are confused. It should be recalled that many judges

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<sup>1</sup> CJEU Judgment of the Court (Grand Chamber) of 15 July 2021, *Commission v Poland (disciplinary regime applicable to Polish judges)*, C-791/19, ECLI: EU:C:2021:596.

<sup>2</sup> Inter-American Court of Human Rights, Judgment of 31 January 2001, *Constitutional Court v. Peru*.

may have reservations about or even radically oppose the adoption of principles or codes of ethics in the judicial sphere, viewing it as further pressure in the control exercised over them, while some perceive it as a strengthening of disciplinary power over the performance of their duties.

5. In order to clarify the relationship between the legal and ethical dimensions, the Ibero-American Commission on Judicial Ethics aims to analyse judges' responsibilities and the need to ensure their independence and impartiality. We then examine the purposes and mechanisms of legal accountability, and specifically the disciplinary frameworks and instruments which adopt codes of ethics applicable to judges. Finally, we explore the idea of legal control deriving from the Ibero-American Code of Judicial Ethics and the ethical scope of judges' behaviour, with specific reference to the institutional interpretation of the principles and virtues that guide their conduct.

## **II. The requirement for judges' accountability cannot undermine their independence or impartiality**

6. In a democratic society, judges should be accountable from a civil, criminal and disciplinary standpoint – or even an institutional or political standpoint, as is the case in countries such as Argentina – yet this requirement cannot undermine their independence and impartiality. The same can be said of moral or ethical accountability, which, likewise, cannot affect these principles.
7. In Europe, the most recent supranational jurisprudence has made clear the importance of ensuring the compatibility of the requirement for accountability with judicial independence and impartiality. This derives, on the one hand, from the principle of separation of powers and, on the other, from the right to a fair trial under Article 6 of the European Convention on Human Rights and the right to effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.
8. The European Court of Human Rights in *Ramos Nunes de Carvalho e Sá v. Portugal* (2018) stressed that “*it goes without saying that the fact that judges are subject to the law in general, and to the rules of professional discipline and ethics in particular, cannot cast doubt on their impartiality*”<sup>3</sup>.
9. In the opinion of the Strasbourg Court, disciplinary proceedings against judges must ensure the respect necessary for the exercise of their duties because public confidence in the functioning and independence of the judiciary is at stake, and, in a democratic State, this confidence guarantees the very existence of the rule of law. In the case cited, the Court found that the Portuguese judge, Paula

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<sup>3</sup> ECtHR (Grand Chamber), Judgment of 6 November 2018, *Ramos Nunes de Carvalho e Sá v. Portugal*, ECLI: EC:ECHR:2018:1106JUD005539113, § 163. Note that the two official language versions, in French and English, are slightly different: “il va sans dire que le fait que les juges sont soumis à la loi en général et aux règles de discipline et de déontologie professionnelle en particulier ne saurait mettre en cause leur impartialité”/“it goes without saying that the fact that judges are subject to the law in general, and to the rules of professional discipline and ethics in particular, cannot cast doubt on their impartiality”.

Cristina Ramos Nunes de Carvalho e Sá, had violated the right to a fair trial. This conclusion took into account four considerations: the disciplinary proceedings were brought against a judge; the penalties were serious; the procedural guarantees before the CSM were limited; and it was necessary to assess the applicant's credibility and that of the witnesses. At the same time, there was a combined effect of two factors: specifically, the inadequacy of the judicial review conducted by the Judicial Division of the Supreme Court and the lack of a hearing either at the stage of the disciplinary proceedings or at the judicial review stage.

10. The European Court of Human Rights has also recently reiterated its jurisprudence on the increasing importance of the principle of the separation of powers for the rule of law in a democratic society, in line with the jurisprudence of the European Court of Justice.
11. In the *Guðmundur Andri Ástráðsson judgment* (2020), the Strasbourg Court states that, from both a personal and institutional standpoint, independence is necessary for impartial decision-making and is thus a prerequisite for impartiality. It explains that independence is characterised by, firstly, a state of mind that denotes a judge's insusceptibility to any external pressure as an attribute of their moral integrity and, secondly, a set of institutional and operational provisions, involving both a procedure for appointing judges in a manner that ensures their independence and selection criteria based on merit, which provide safeguards against undue influence or the unlimited discretionary power of the other state powers, both at the time of the appointment of judges and during the exercise of their duties<sup>4</sup>.
12. As the European Court of Human Rights has indicated, the scope of the judges' protection in these cases is particularly broad, not only against administrative and judicial decisions but also in the case of the adoption of laws affecting the independence of the judges themselves<sup>5</sup>.
13. In Europe, the European Court of Justice refers to the principles of independence and impartiality in respect of the disciplinary regime applicable to judges as follows: "*The requirement of independence also means that the disciplinary regime governing those who have the task of adjudicating in a dispute must display the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions. Rules which define, in particular, both conduct amounting to disciplinary offences and the penalties actually applicable, which provide for the involvement of an independent body in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence, and which lay*

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<sup>4</sup> ECtHR, Judgment of the Court (Grand Chamber) of 1 December 2020, *Guðmundur Andri Ástráðsson v. Iceland*, ECLI: EC:ECHR:2020:1201JUD002637418 (unlawful appointment of a member of a court judging a traffic violation), § 234.

<sup>5</sup> ECtHR, Judgment of the Court (Grand Chamber) of 23 June 2016, *Baka v. Hungary*, ECLI: EC:ECHR:2016:0623JUD002026112 (removal from office of the President of the Supreme Court of Hungary).

*down the possibility of bringing legal proceedings challenging the disciplinary bodies' decisions constitute a set of guarantees that are essential for safeguarding the independence of the judiciary*<sup>6</sup>.

14. In Latin America, the Inter-American Court of Human Rights has referred, on the same subject, to the fact that the different countries have established strict regulations and procedures for both the appointment and removal of judges. In the latter case, it has indicated that the authority responsible for the removal of judges must behave impartially in the corresponding procedure, allowing the exercise of the right to defence. This is because the unfettered removal of judges from office may foster objective doubts in the observer about the effective possibility of their resolving disputes without fear of reprisals<sup>7</sup>.
15. In Costa Rica, the Constitutional Chamber of the Supreme Court of Justice, hearing an appeal for amparo against disciplinary proceedings in respect of a group of judges, stated that: *“It is not by chance that the various instruments and statements concerning the issue of judicial independence address administrative aspects such as the appointment of judges, their removal from office and the application of disciplinary penalties. In this practical and particular dimension, in the end, the right to defence plays out in the face of pressures of all kinds. A judge who is appointed by means of opaque mechanisms, or whose removal or punishment may occur without sufficient justification at the behest of any kind of authority, is a judge in a clearly vulnerable situation”*<sup>8</sup>.
16. Ultimately, proceedings brought against judges for legal or ethical accountability may undoubtedly affect their independence or impartiality, which explains why it is necessary to maximise judicial safeguards when disciplinary or accountability proceedings are pursued. The fundamental reason for this is to guarantee due process and to ensure the confidence of defendants in the judicial system.

### **III. The interaction between ethics applied to the judicial function and the legal framework**

17. The renowned Spanish philosopher Adela Cortina Orts, states: *“Ethics is about the character building of individuals, institutions and peoples”*<sup>9</sup>; it therefore follows that judicial ethics is about the character building of judges and, with them, the judiciary. In the words of Domingo García-Marzá, *“from the perspective of the law, the binding force of the action derives from the coercion exercised through*

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<sup>6</sup> CJEU Judgment of the Court (Grand Chamber) of 25 July 2018, LM Minister for Justice and Equality, Case C-216/18 PPU, ECLI: EU:C:2018:586, § 67.

<sup>7</sup> Inter-American Court of Human Rights, Judgment of 5 August 2008, Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela.

<sup>8</sup> Constitutional Chamber of the Supreme Court of Justice of Costa Rica, Judgment 5996 of 28 April 2015.

<sup>9</sup> Cortina, A. (2013). *¿Para qué sirve realmente la ética?* Spain: Paidós (p. 34).

*external penalties. From an ethical perspective, we refer to the linkages derived from the force of rational conviction”.*<sup>10</sup>

18. It is important to note that the force of legal rules derives not only from coercion but from their rational acceptance, which is only gained through ethical discernment. *“No legal order could maintain stability, nor survive for long, if its rules were followed, not through conviction nor through their acceptance as binding models of conduct, but only through fear of penalties”*<sup>11</sup>.
19. In this respect, we suggest that both the building and fostering of ethics and disciplinary action serve as complementary tools in the oversight of judges’ behaviour, the first as self-control and the second as external control.
20. Both judicial ethics and the disciplinary regime for the judiciary are concerned with the regulation of judges’ behaviour; while ethics promotes self-regulation of conduct through the forging of virtues and rational decision-making, disciplinary rules establish regulations involving mandatory compliance whose breach may involve the imposition of penalties.
21. Every person who administers justice must have a regulatory framework with clear provisions regarding what is expected of them in their professional practice. These provisions should include both legal and administrative instruments and ethical guidelines, to help direct them when addressing the different situations encountered in their daily work.

#### **IV. The relationship between the legal framework, and specifically the disciplinary regime, applicable to judges and codes of judicial ethics**

22. At the launch of the Global Judicial Integrity Network’s guide to the development and implementation of codes of judicial conduct, it was concluded that it was important for each judiciary to understand and effectively address the distinction and linkages between ethics and disciplinary rules<sup>12</sup>.
23. Historically, there has been some confusion between the disciplinary and ethical standards applicable to judges. In 2006, when the Judicial Summit adopted the Ibero-American Code of Judicial Ethics, it was noted that diverse models were followed to manage the coexistence of disciplinary rules and judicial ethics in its Member States. It was therefore proposed to make a clear distinction between the existing models: disciplinary, combined and dual<sup>13</sup>.

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<sup>10</sup> García Marzá, D. (2004). *Ética empresarial. Del diálogo a la confianza*. Madrid: Trotta (p. 46).

<sup>11</sup> Ramos Pascua, J. A. (2007). *La ética interna del derecho*. Spain: Desclée De Brouwer (p. 31).

<sup>12</sup> Global Judicial Integrity Network (2020). *How to Develop and Implement Codes of Judicial Conduct*. UNODC. Retrieved from [https://www.unodc.org/documents/ji/knowledge\\_products/Codes\\_of\\_Conduct\\_2020.pdf](https://www.unodc.org/documents/ji/knowledge_products/Codes_of_Conduct_2020.pdf).

<sup>13</sup> Steidel Figueroa, Sigfrido, *Ética para juristas: Ética judicial y responsabilidad disciplinaria*, Ediciones Situm, San Juan, Puerto Rico, 2019, pp. 45-52.

24. On the basis of this classification and in order to underscore the progressive development between disciplinary rules and judicial ethics in the different legal cultures and political systems, three models were identified: a traditional model in which ethical issues are not considered legally relevant and which therefore addresses exclusively disciplinary issues; a transitional model in which ethical and disciplinary issues are addressed in conjunction, without distinguishing between them; and, finally, a dual model where purely ethical issues are addressed separately from disciplinary matters applicable to judges.
25. The traditional model can be considered insufficient since it regards ethical issues as irrelevant, while the transitional model is flawed because it mixes legal and ethical responsibilities. The dual model would, therefore, prevail as the best model to which a democratic society should aspire.
26. In this respect, Jiménez Asensio states: *“It should be crystal clear, if it is not already, that codes of conduct are instruments of self-regulation and, therefore, laws or regulations should not be their means of formal expression; moreover, values or principles can be incorporated in normative texts, upon which the rules governing conduct or action contained in such codes may then be constructed. Still less should they be bound to breaches of values, principles or rules of conduct, with their consequent penalties, since in this case we stray beyond the scope of ethical standards and codes of conduct to fall within the sphere of criminal law or administrative sanctions”*<sup>14</sup>.
27. Nevertheless, establishing this dual model entails significant difficulties, as can be seen in the process of adopting codes of ethics and the judicial application of disciplinary accountability.
28. With respect to the codification of ethical principles and virtues, judges have shown particular resistance to the adoption of codes of judicial ethics and, with no alternative, there has been an insistence on a clear separation between the legal – especially the disciplinary – and the ethical. This was the case in Spain in 2016 when, with great reluctance, judges adopted the *Principles of Judicial Ethics* and the Code of Ethics for Spanish judges, where their point of departure is clearly and specifically stated in the preamble: *“The disciplinary regime is completely unrelated to judicial ethics”*. The same can be seen, for different reasons, in Chile and Portugal.
29. In the document *Principles of Judicial Ethics*, the Spanish judges explain that judicial ethics *“is only conceivable on a strictly discretionary basis with no legal accountability, as opposed to discipline, which is a set of mandatory rules whose violation carries legal consequences. Judicial ethics works as a positive stimulus, since it encourages excellence, whereas discipline works as a negative stimulus, based on sanctions. Consequently, the effectiveness of these Principles of Judicial Ethics*

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<sup>14</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>.

*will stem from the degree to which each judge embraces them and translates them into models of behaviour”.*

30. With respect to the jurisprudence rooted in what was a healthy legal positivism when implementing the disciplinary regime, we can discern an endeavour to ignore any ethical reference, while if such a reference is made, it is superficial and inconsequential.
31. The Spanish Supreme Court has twice cited the Ibero-American Code of Judicial Ethics: once in reference to the dismissal of disciplinary proceedings against a judge and on the other occasion in reference to a case concerning a judge’s conflict of interest with respect to business activities. In the judgment of 2 April 2012 – on disciplinary matters – the petitioner had reported alleged misconduct by a judge, who expressly invoked the Ibero-American Code and, although it did not constitute part of the obiter dicta, it is highly significant that the reporting judge expressly referred to the Code by putting the words in the mouth of the claimant<sup>15</sup>. In contrast, in the judgment of 27 November 2013 – outside the disciplinary framework – the reporting judge refers frequently to the ethical framework for conflicts of interests with respect to judges with business activities<sup>16</sup>.
32. In Costa Rica, the Supreme Court of Justice cited the same rules in a matter within its disciplinary competence when it issued a decision in respect of proceedings against a judge who was sanctioned due to excessive delay in the handling of proceedings and their low rate of resolution. It was pointed out that the CIEJ itself imposes a duty of diligence aimed at avoiding the injustice entailed by late decisions and requires judges to ensure that the processes for which they are responsible are concluded within a reasonable period of time<sup>17</sup>.
33. It is considered by this Commission that the separation between legal accountability and ethics – particularly in the disciplinary arena – does not preclude taking into account the fact that the entire legal system, including the types of disciplinary infringements applicable to judges, is encompassed and rooted in an ethical foundation. While the principle of the criminal classification of disciplinary offences cannot be affected by the application of codes of judicial ethics, there is still a point to taking into account the development of various infringements in judicial activity within the field of judicial ethics. More importantly, this holds true beyond the scope of criminal and disciplinary accountability, as is the case with the system for conflicts of interest, recusals and dismissals of judges, where developments in the ethical framework applicable to the judicial profession can be used by the legislator and the judge.

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<sup>15</sup> Supreme Court (3rd Chamber, 7th Section), Judgment of 2 April 2012 (Appeal No. 255/2011, ECLI: ES:TS:2012:2676, <sup>15</sup> reporting judge: Lucas Murillo de la Cueva (dismissal of a complaint against judge for not recusing themselves from a case).

<sup>16</sup> Supreme Court (3rd Chamber, 7th Section), Judgment of 27 November 2013 (Appeal No. 341/2012, ECLI: ES:TS:2013:6124, reporting judge: Pico Lorenzo; dissenting opinion: Conde Martín de Hijas (conflict of interest for a judge with business activities).

<sup>17</sup> Supreme Court of Justice of Costa Rica, Judgment 445 of 26 March 2021.

34. Disciplinary rules may coincide with the content of codes of ethics, although they differ in terms of their forms and aims. While codes of ethics seek to guide behaviour, disciplinary rules indicate the basic rules of action and the penalties for non-compliance.
35. In short, in addition to the desirability of establishing and implementing a dual model which accommodates the coexistence and application of a code of judicial ethics alongside legal regulations and which does not impede the recognition of the existence of an ethical foundation for the entire legal system, including judicial rules, it is expedient to consider the ethical framework applicable to judges from the legislative and judicial perspective.
36. In the case of disciplinary power, while the principle of the criminality of sanctionable offences must be respected, this does not preclude consideration of the ethical context of the infringement, albeit without the demands and guarantees required by the disciplinary regime in other areas of the judicial rules, such as conflicts of interest, recusals and dismissals.
37. While effectively implemented disciplinary actions may constitute an ineluctable mechanism for ensuring that judges fulfil their duties, ethics can foster both a better understanding of these duties and a commitment to them, which transcends the avoidance of discovery or punishment in the case of non-compliance.
38. Disciplinary rules provide a minimal framework of guidance for proper professional practice, in this case, for the judiciary. It is considered a minimal framework because “*it is important to emphasise that the system of controls currently in force and those that need to be developed are not sufficient to guarantee ethical conduct*”<sup>18</sup>; rather, this always requires more than mere regulatory compliance.
39. While disciplinary rules are binding, they must be duly reasoned for the proper administration of justice and the service that the judiciary provides to society.
40. In order for disciplinary actions to be effective in controlling judges’ behaviour, they must be fully in proportion to the misdemeanour committed, they must guarantee the implementation of control and supervision mechanisms in order to ensure – to the extent possible – the detection of breaches, and due process must be carried out as swiftly as possible in order to demonstrate a correspondence between the infringements and their consequences<sup>19</sup>.
41. As stipulated in Article 40 of the Ibero-American Code of Judicial Ethics, “*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*”. It follows that one of the main ethical tasks of the judiciary with respect to its judges is to ensure that there are clear and well-founded disciplinary rules. It is also important to provide training and ensure dissemination for their knowledge and better understanding.

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<sup>18</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>19</sup> León Hernández, R. (2016). Sobre la obediencia a las leyes. *Ética Judicial Cuaderno 9*, San José, Costa Rica, 59-67.

## V. Judicial ethics and its impact on judges' accountability in accordance with the Ibero-American Code of Judicial Ethics

42. Both the desirability and adoption of a dual model of separation between the legal and ethical domains as regards the rules for judges pose specific problems in interpretation on the part of judges and judicial ethics committees.
43. A prerequisite for the establishment of judicial ethics bodies and institutions is that they should not interfere in disciplinary matters.
44. The preamble to the Ibero-American Code of Judicial Ethics of 2006 notes the diversity of existing models for the institutional interpretation of ethics, in many cases combined with legal functions: *“a comparative reading of the various systems currently in force in Ibero-America in the area of judicial ethics serves to show the existence of a highly diversified process. There are countries which have opted to establish ad hoc courts of judicial ethics which judge misdemeanours specific to their own codes of ethics, while in other countries, ethics tribunals are restricted simply to declaring the existence of an ethical misdemeanour, leaving any final decision-making to the usual disciplinary bodies. There are also countries where ethical misconduct is included within the disciplinary legal system applied by the competent administrative or judicial bodies. And, finally, there are others that entrust the effectiveness of the code to the individual discretion of those for whom it is designed. Moreover, in addition to ethics tribunals, some codes provide for the existence of ethics committees to which queries or questions may be addressed for the purpose of obtaining an opinion which may or may not be confidential; in this way, while providing an advisory service, the general ethical requirements established through the principles also become enriched and better defined”*.
45. In the dual model which has been advocated, the desirable separation from an institutional point of view between the legal and ethical dimensions entails that judges who apply the law and make legally binding decisions on matters of legal accountability – in particular disciplinary accountability – are the only ones who exercise such power, and the commissions that adopt recommendations and propose solutions whose effects derive from the greater or lesser degree of authority of the judicial ethics committee should not interfere in the exercise of disciplinary power.
46. From a legal standpoint, there is no doubt about the non-binding nature of the actions of the Ibero-American Commission on Judicial Ethics and of the commissions and committees that have been established to this effect.
47. In this respect, Article 95 of the Ibero-American Code of Judicial Ethics states: *“The opinions, recommendations, advice or any decision issued by the Ibero-American Commission will in no case be binding on Judiciaries, Councils of the Judiciary or the Judicial Summit itself”*.

48. The concern that ethics should not interfere with discipline has been brought to the attention of the Spanish Commission on Judicial Ethics, to the extent that its decisions have established a clear separation between legal and ethical dimensions. Thus, in relation to the basis for judges' self-recusal, the Spanish Commission frequently indicates as follows: *"The dilemma that judges may face about the propriety of whether to recuse themselves is a legal issue, beyond the scope of this Commission on Judicial Ethics. Consequently, we cannot give our opinion in this respect. We can, however, offer an opinion on how judges should proceed if they understand that, because there is no manifest ill-will or other legal cause, they should not recuse themselves"*<sup>20</sup>. Moreover, when a consultation is hypothetical in nature or refers to a disciplinary issue, it dismisses the query because it interferes in the disciplinary regime<sup>21</sup>.
49. In countries where the rules of the Ibero-American Code of Judicial Ethics have been adopted within their respective legal systems but which do not have ethics tribunals or judicial ethics commissions, as is the case in Uruguay, it is both desirable and practicable, when considering and analysing judges' behaviour, that the bodies that hear matters of disciplinary accountability distinguish, where appropriate, between what constitutes a disciplinary offence (the principle of legality and criminal classification) and what constitutes an ethical misdemeanour, independent of the former. On occasions, the conduct in question cannot be considered a disciplinary offence but can be considered an ethical misdemeanour, contrary to the rules of the Code of Judicial Ethics, and it is important to highlight this. At other times, the conduct not only constitutes one or more disciplinary offences but also one or more ethical misdemeanours, where it is both appropriate and instructive to indicate the specific ethical principles or rules breached or undermined by judges' actions. Even when there is no disciplinary offence, a judgment involving an ethical reproach can prove highly effective and provide an example for preventing similar future behaviour both by that specific judge and other judges. At the same time, the silence of those responsible for judging this conduct – within a disciplinary process – and those who do not issue an opinion, despite the fact that an ethical misdemeanour is evident, can be interpreted as a signal that no ethical reproach can be made.

## VI. Conclusion

50. Judges' ethics underpin legal regulation, particularly in relation to the civil, criminal and disciplinary accountability of each judge and in areas which are not covered by the law, where the behaviour of judges as defined in the various ethical codes is applicable and whose interpretation corresponds to judicial ethics committees and commissions, as appropriate.

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<sup>20</sup> Spanish Commission on Judicial Ethics, Opinion (Consultation 8/18) of 3 December 2018, Principle of impartiality; complaint by a lawyer, subsequently dismissed; avoidance of unconscious biases or prejudices, paragraphs 3 and 4.

<sup>21</sup> Spanish Commission on Judicial Ethics, Decision (Consultation 4/18) of 23 October 2018, Refusal to admit; subject of queries; actions presenting a practical dilemma in light of the Principles of Judicial Ethics.

51. Both disciplinary law and judicial ethics act as mechanisms for controlling judges' actions, since they both serve to legitimise the exercise of jurisdictional power and, ultimately, to achieve impartial justice. The difficulty arises because the application of disciplinary law to judges requires that the legislator has to make strict use of the principles of legality and criminal classification - the only way to guarantee the independence of the judicial function. Furthermore, disciplinary law can only be applied to judges as public servants and never when they are performing their jurisdictional duties.
  52. A clear dividing line must be established, at least from a disciplinary perspective, which does not prevent broad regulation of codes of conduct and their resultant interpretation from the point of view of judicial ethics.
  53. Interaction between ethics and the law is essential, and with the due safeguards, it should also contribute to the exercise of disciplinary power over judges, without undermining their independence and impartiality, and should be taken into account by the courts in the control and safeguarding of judges' rights in disciplinary proceedings.
  54. While any disciplinary action must be based on positive rules of disciplinary administrative law, this does not prevent the principles contained in codes of judicial ethics from being considered as benchmarks in the respective grounds.
  55. Judicial ethics committees and commissions issue opinions and decisions relating to the practical interpretation of the Code of Ethics, which – due to their ethical and non-disciplinary nature – seek to clarify the interpretation of the principles and recommend best practices for action. Nevertheless, these are not intended to be binding nor do they entail penalties for non-compliance. Such opinions, however, may inspire the creation of disciplinary rules on the part of the competent bodies, if they deem it appropriate, for better safeguarding judicial conduct.
  56. Finally, there must be clear boundaries established between preventive control and disciplinary action.
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