



## **26th Opinion, of 8 September 2023, of the Ibero-American Commission on Judicial Ethics on the public visibility of judges' private lives and its ethical relevance. Reporting judge: Commissioner Farah M. Saucedo Pérez**

### **I. Introduction**

1. The Ibero-American Commission on Judicial Ethics<sup>1</sup> devotes a significant proportion of its work to encouraging members of the judicial systems in the region to behave in accordance with the principles and virtues enshrined in the Ibero-American Code of Judicial Ethics, in line with the Sustainable Development Goals approved by the United Nations in 2015 and the 2030 Agenda for Sustainable Development, international instruments that also guide the work of the Ibero-American Judicial Summit.
2. At its meeting on 21 February 2023 in Santo Domingo, the capital city of the Dominican Republic, the Ibero-American Commission of Judicial Ethics agreed, by unanimous vote, to prepare an opinion on the matter of the public visibility of judges' private lives and its ethical relevance.
3. The central idea in this opinion has precedent in several of the decisions made by the Ibero-American Commission of Judicial Ethics<sup>2</sup>. In addressing some of the ethical dilemmas faced by the members of the judiciary, the Commission has not overlooked their relationship with judges' private lives, understanding that judges' behaviour, whether in public or private, is a matter of interest to the member states of this geographical and cultural area. For this reason, this opinion proposes an up-to-date approach to the issue, with the aim of stimulating reflection and debate about an ethical conflict of ancient origin that has not lost its applicability in modern society.

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<sup>1</sup> '(...) had no institution been created to interpret and develop these principles and virtues, nothing would have been achieved in practice (...)'. *Comentarios a los dictámenes de la Comisión Iberoamericana de Ética Judicial*. Escuela Nacional de la Judicatura, Santo Domingo, 2023, p. 19.

<sup>2</sup> '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'. See the 10th Opinion on *training in judicial principles and virtues*, *op. cit.*, p. 293.

## II. Judges' conduct

4. In Western cultural tradition, the Bible tells that, one day, Moses dedicated himself to the task of settling disputes. He was observed by his father-in-law who, impressed by the rigour of the task, recommended: “(...) select from all the people some capable, honest men who fear God and hate bribes (...)”<sup>3</sup>, and that was how people who were deemed able to judge were chosen from among the people. The book *Judges* includes stories such as that of Deborah, who was both the only female judge among them and the most virtuous, and others, such as Samson, who were less so, demonstrating the humanity of the biblical model of a judge.

5. From the sixteenth century and during the colonial period, the monarchy of Aragon and Castile decided to share this function with other people who would judge in their name, among them, the *oidores*, who in the American provinces were required to have not only ‘(...) skills in science, prudence and the other virtues always required of a judge but to excel in them as far as they can, and therefore chosen from among the best, most well tested and experienced subjects (...)’<sup>4</sup>.

6. The Portuguese monarchy, like the Spanish monarchy, relied on various officers in the administration of justice in the American colonies, among them the *juizes de fora*, *ouvidor geral* and *desembargadores*. These magistrates were expected to behave well and their conduct was verified at the end of their term of office. Subjects were given the opportunity to make complaints about any digressions during their incumbency examination (*residência*), where it was common to question witnesses as to whether officials had slept with any of the women brought before them, a line of inquiry that is clearly concerned with their personal conduct.

7. These precedents demonstrate the concerns of different societies, including those of the Ibero-American geopolitical space, about the behaviour of those who were responsible for

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<sup>3</sup> *Exodus 18.21*. See *Bible* at <https://www.bible.com>

<sup>4</sup> De Solórzano Pereira, J. *Política Indiana*. <https://www.erlibro.com.>, p. 776.

delivering justice, as cornerstones of the credibility of the powers in whose name they were acting.

8. At the end of the last century, the UN formulated a code of conduct for judges, known as the *Basic Principles on the Independence of the Judiciary*. Among other considerations, Article 8 states that ‘(...) 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’<sup>5</sup>, with reference to the repercussions of judges’ conduct in private on their professional lives.

9. The above initiative was followed in 2002 by the internationally significant *Bangalore Principles of Judicial Conduct*, whose preamble states: ‘A judiciary of undisputed integrity is the bedrock of democracy and the rule of law. Even when all other protections fail, the judiciary provides a bulwark to the public against any encroachments on rights and freedoms under the law’<sup>6</sup>.

10. This code was followed by other regional declarations on the issue, leading to the *Ibero-American Code of Judicial Ethics*, adopted by the Ibero-American Judicial Summit in 2006, which underlines the ongoing relevance of a debate which continues to this day and will continue over time because of its profound importance for society and humanity.

## **II. The private lives of judges and the demands of judicial ethics**

11. A judge’s profession is commonly associated with virtue; it is said that a judge is virtuous when they are well versed in law and in daily life, as well as honest and fair. This ideal of a judge, dating back to ancient times, reaches the contemporary world as an axiom: it is a profession that demands high standards of conduct from those who practice it, which are necessary to successfully resolve the matters which they hear. In line with this vision, the Ibero-American Code of Judicial Ethics states: ‘(...) the power conferred on each judge

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<sup>5</sup> *Basic Principles on the Independence of the Judiciary*. See <https://www.chchr.org>

<sup>6</sup> Weeramantry, C.G., *Preface to the Commentary on the Bangalore Principles of Judicial Conduct*. United Nations Office on Drugs and Crime. Vienna, 2019, p. iii.

entails specific requirements which would be inappropriate for the common citizen exercising private powers; acceptance of the judicial office brings benefits and advantages but also responsibilities and disadvantages (...)’<sup>7</sup>. These last are consciously assumed by judges, while the exercise of the profession contributes to their assimilation as part of a process of continuous professional and human development.

12. As they progress through the judiciary, judges must consolidate these virtues, working toward this objective by way of the training processes implemented by the various judicial systems, the principles of the codes of judicial ethics, the regulations of organic laws, the rules of the constitutional texts and the accumulated examples of other judges in each jurisdiction. Nevertheless, it may often happen that their actions in private constitute a cause for questioning, which can on occasions be more demanding than that arising from a breach of rules related to the judicial function. While it might seem that the boundaries between a judge’s professional life and their private life are well defined and that it is only a matter of remaining vigilant to ensure that there is no contamination between them, it is much more problematic.
13. The complexity of the concept of private life in today’s world, with its meaning and boundaries constantly changing and evolving, suggest the advisability, for the purposes of this opinion, of assuming certain premises, i.e., that judges’ conduct complies with ethical canons that extend to the different aspects of their behaviour in the different areas where they move, and that the context in which they are applied is continuously changing, as happens with society as a whole. To these requirements we would add that of providing a high-quality judicial service. Put this way, it has led some to consider the profession like some sort of ‘priesthood’ which segregates judges into a kind of professional cloister where they remain safe from the ‘temptations’ of society and preserved for the deliverance of the justice that is expected of them.

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<sup>7</sup> *Ibero-American Code of Judicial Ethics*. See <https://www.poderjudicial.es>, p. 3.

14. While every judge has their own set of tools with which to address the challenges of their progress through the judicial service, judicial institutions would not be acting with due responsibility if they consented to their members being set apart, whether consciously or unconsciously, from the society in which they live. The knowledge of the real world to which these professionals belong is acquired, to a large extent, as a result of their life experience; a good judge does not stand on the sidelines of society but participates in it.

#### **IV. The private lives of judges and their public visibility**

15. The interest in identifying improper judicial conduct has led to its definition as ‘(...) that which generally affects or appears to affect the virtuous practices of judges, insomuch as such behaviour occurs while a judge, in their daily life, is actively pursuing the social role that is imposed on them by the judiciary, that is, in all the temporary or material circumstances in which their participation is only explained by the performance of their institutional public role. It encompasses both their conduct in the exercise of the judicial function and their conduct outside it where this carries a certain degree of relevance’<sup>8</sup>. This definition corresponds to the viewpoint of the Ibero-American Code of Judicial Ethics, maintaining its validity to the extent that it portrays situations that still continue to occur among the members of the judiciary today.

16. Sometimes, a judge or one of their family members may extend bonds of friendship or other links to third parties, which - although this takes place outside the courtroom, in the private realm of their personal relationships - may generate distrust about their actions, since these relationships could influence or be seen to influence their judicial decisions. To avoid this situation, however, it is not necessary for judges to definitively renounce these ties (although they must do so when hearing a process that involves them, recusing themselves from the proceedings under the procedural rules) in order not to deviate from the fulfilment of their duty to remain impartial.

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<sup>8</sup> Ídem Andruet (h), A. *Ámbito de los comportamientos judiciales impropios (I)*. *Comercio y Justicia*, published on 19-10-16. See <https://comercioyjusticia.info>.

17. Judges may not use the powers conferred on them by law for the exercise of the judicial function for their personal benefit or that of their family, or of any familiar person, with the aim of resolving a matter related to the powers of other institutions. On the contrary, they must refrain from using their influence if they wish to act with the rectitude that is expected of them; likewise, they must not use the material resources made available to them for the performance of their duties to serve their personal interests. This type of behaviour goes against the model of a virtuous judge, in strict compliance with the propriety required of this profession, a virtue that also compels them to dress and behave decently outside the courtroom, in both physical and virtual spaces, where the rules imposed by society are not always respected.
18. Judges' interaction on social networks is among the most highly debated aspects in the field of judicial ethics today. If these interactions are related to issues linked to their private lives, the controversy can often extend to global proportions, a phenomenon of relatively recent emergence with multiple repercussions on people's lives, made possible by the increasing uptake of new technologies.
19. Judges' behaviour on social networks does not follow the same pattern in each country in the Ibero-American region. A small group chooses to eschew the use of digital platforms in order to avoid the risks posed by the spread of information and the storage of personal data, while the majority use social media with respect to their professional activities and for so-called 'personal' issues, that is, those related to their private life.
20. The publication on social media of content related to interpersonal ties, family, travel, celebrations, hobbies, or other personal content allows these platforms to become a virtual gateway to judges' private lives and may lead to their overexposure in the digital media. While those who deny their impact on the credibility of the judiciary may argue that these personal publications are made outside the judicial sphere and as a consequence of the exercise of the right to free expression, these protestations validate what has already been established by the Ibero-American Commission of Judicial Ethics, insofar as: '(...) 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<sup>9</sup>.

21. The processes of globalisation and digitalisation in modern society mean that it is becoming increasingly difficult to safeguard matters related to judges' private lives from public knowledge. This may be because they form part of the personal data stored by digital platforms (even if they have not been actively published) or because the use of these technologies has inevitably established a pattern for the social relationships of all people who use them (even if they do not always recognise this), whereby private spaces are diminishing and it is an almost utopian dream to attempt to preserve them - a dilemma faced not only by judges but all people in general.
22. Nevertheless, the repercussions of judges' private actions on their public function and the lack of a clear line between one and the other, for the reasons mentioned, is an issue that must be addressed. This should take into account at least three fundamental elements: the protection of judges' individual rights, the adequate consideration of the impact of a given private act on their public function and the seriousness of the offense, in light of society's perception of the conduct of judges, which in turn depends on the standards expected by the majority of the population in a given place and time.
23. Judges have an active role in upholding the rule of law insofar as the principle of judicial integrity requires them to be the best guardians of respect for the Constitution, other laws and the fundamental rights of individuals, and therefore the guarantors of democracy; for these

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<sup>9</sup> Montero Montero, J y Andruet (s) A. *Dictamen décimo de la Comisión de Ética Judicial ver en Comentarios a los dictámenes de la Comisión Iberoamericana de Ética Judicial*. Escuela Nacional de la Judicatura, Santo Domingo, 2023, p. 293.

reasons, their conduct must never be less than irreproachable<sup>10</sup>, in accordance with the standards of behaviour expected by society.

## V. Conclusions

24. The impact of judges' private lives on their public office is an issue to which the judicial systems of the Ibero-American region must be constantly alert, because the violation of ethical principles in the private sphere also jeopardises the credibility of the judicial function that they perform and undermines public trust in the administration of justice.
25. There is increased public visibility of judges' private lives in today's world, thanks to the influence of globalisation and the constant expansion of information technologies and social communication. Judges' participation in social networks, therefore, requires that they are aware of the implications of their interactions in digital spaces, particularly those related to their private lives, and their potential effect on the appearance of judicial integrity.
26. The ethical relevance of the public visibility of judges' private lives is a source of controversy at the present time. Issues arise related to the determination of improper judicial behaviour, respect for fundamental rights and their responsible exercise, and the identification of appropriate persons to evaluate judges' actions, among other aspects, which justify the need to place this debate on the agenda of judicial institutions that are invested in the integrity of judges and the quality of the judicial service.

## VI. Recommendations

27. To the judicial institutions of Ibero-America, the Commission recommends:
  - a. Continuing to promote training in ethical values and principles for the members of the judiciary, including developing and updating their proficiency, to promote and strengthen

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<sup>10</sup> *Commentary on the Bangalore Principles of Judicial Conduct*. United Nations Office on Drugs and Crime. Vienna, 2019, p. iii.



judges' ethical conduct and consolidate the credibility of justice systems and, with it, public trust in judicial institutions.

- b. Establishing effective mechanisms in judicial systems that allow the identification of inappropriate behaviour in judges' private lives which impacts on their judicial function, and correcting it, as appropriate, with the diligence demanded by the magnitude of their transgressions.
- c. Insisting that - as proposed in previous opinions - when the Ibero-American Code of Judicial Ethics is reviewed, it includes reference to judges' behaviour on social networks, in relation to their private life, and, in line with this, its language should be updated to reflect the imprint that the development of information and social communication technologies has left on all spheres of society, including the delivery of justice.

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