



GENERAL COUNCIL OF THE JUDICIARY

Working Group for the creation of a
Code of Ethics for the Legal Profession

Final text agreed at the session held on 16 December 2016

PRINCIPLES OF JUDICIAL ETHICS

PREAMBLE

These “Principles of Judicial Ethics” aspire to collect the values and rules of conduct shared by the Spanish Judiciary. They aim to serve as a guide in the undertaking of jurisdiction and promote collective dialogue and personal reflection on the challenges faced by those who exercise it within a complex and changing legal and social framework. It is proposed, furthermore, to strengthen public trust in justice by making the behaviour models explicit in accordance with those judges that commit to fulfil their functions.

The adoption of a judicial ethics text comes about in a favourable international context, initiated with the approval of the Bangalore Principles (2001), within the framework of the United Nations, continued with the Opinion of the Consultative Council of European Judges of the Council of Europe on ethics and the responsibility of judges (2002), the Ibero-American Model Code of legal ethics (2006), adopted by the Ibero-American Judicial Summit, to which the General Council of the Judiciary adhered by Plenary Session on 25 February 2016, and the London Declaration on Judicial Ethics (2010), promoted by the European Network of Councils for the Judiciary. Finally, Recommendation R (2010) 12, of 17 November, of the Committee of Ministers of the Council of Europe encourages Member States to approve a Code of Judicial Ethics.

In recent years the large majority of countries in the European Union have subscribed to judicial ethics texts (codes, guides, compilation of principles) of different origins (Higher Councils of the Judiciary, judicial associations, conferences of judges, court presidents, etc.)

In this context, the General Council of the Judiciary set in motion a process aimed at the creation of some “Principles of Judicial Ethics”, which have been redacted by a committee composed of representatives from judicial associations, non-associate members of the judiciary, and a number of experts, with the valuable participation of delegates from each High Court of Justice designated by



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the respective Governing Chambers, always with the objective of reflecting the plurality of opinions that exist in the Judicial Profession.

The disciplinary regime is completely unrelated to judicial ethics. The latter is only conceivable in terms of strict willingness and lack of legal responsibility, as opposed to discipline, which is a group of compulsory regulations whose infringement draws legal consequences. Judicial ethics operate as a positive stimulus as it is aimed at excellence, whereas discipline works on the basis of a negative stimulation, which is the sanction. Therefore, the effectiveness of these “Principles of Judicial Ethics” will arise from the level at which each judge assumes them as their own, and translates them into models of conduct.

If ethics, in general, is a worthy life proposal, judicial ethics is the promise of good justice insofar as it incorporates the qualities necessary to achieve the end assigned to it by the Constitution: the protection of the rights of citizens.

The text presented here covers general principles with which the judiciary is familiar: independence, which marks out a space for the judicial decision exempt from unwanted influences; impartiality, which underlines the role of the judge as a third party removed from the interests in play; and integrity, which demands from those exercising jurisdiction coherence with the previous principles, and with that of respect for human dignity, even in social life, in all those circumstances that put public trust in justice into question.

It also takes in behaviour models relating to justice as the provision of a service, such as courtesy, diligence and transparency. Its level of fulfilment is directly perceived by those who turn to the courts, thus contributing decisively to the formation of public opinion on justice and, for this very reason, they cannot be disregarded as “minor”.

The system comes full circle with a Judicial Ethics Committee whose composition, functioning and procedure guarantee confidentiality in consultations and the merely guiding nature of the opinions it expresses. Duly anonymous, the opinions and reports from the Committee will constitute a highly useful body of doctrine.



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PART ONE

Principles

CHAPTER I

Independence

1. Judicial independence is a right for every citizen whose protection and defence form a mandatory part of the professional duty of the judge, and not a personal privilege of their statute.
2. Judges should be of an attitude of mind that, aside from their own ideological convictions and personal feelings, excludes from their decisions any outside interference towards their assessment of the entire evidence gathered, the appearance of the parties in the proceedings, in accordance with the rules of procedure, and their understanding of the legal regulations to be applied.
3. Members of the judiciary must be actively committed towards the good functioning of the judicial system, and promoting an attitude of respect and trust in the Judiciary throughout society, and exercise the jurisdictional function in a manner that is prudent, moderated and respectful to the other powers of the State.
4. It is the duty of judges to demand from the political powers working conditions appropriate for the independent and effective undertaking of their functions, and the resulting provision of human and material resources.
5. Judges have the duty to demand legal improvements that result in a benefit to judicial independence as a guarantee to citizens.
6. Judges, subject to their legal duty to report it, must resist all direct or indirect attempts by third parties removed from the proceedings who are inclined to influence their decisions, whether they originate from the other political powers, pressure groups or public opinion, or even the Judiciary itself, avoiding taking into consideration, upon issuing their rulings, any expectation of approval or rejection from the same.
7. Members of the Judiciary who form part of higher courts must undertake their duties respecting the jurisdictional independence and dignity of those who form part of lower courts.
8. Judges who, as members of the judiciary, carry out public roles, shall undertake their competencies and adopt their decisions objectively and where it so proceeds, and in any event in matters of selection, naming and promotion of members of the Legal Profession, with a clear respect for the principles of merit and capacity.



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9. Judges must behave, and undertake their rights in all activity in which they are recognisable as such, in a way that they do not compromise or prejudice the perception held by society on the independence of the judiciary in a democratic, lawful state.

CHAPTER II

Impartiality

10. Judicial impartiality is the distancing of judges from appearing parties, to which they must remain at an equal distance, and regarding the object of the proceedings, to which they must refrain from taking an interest.

11. Impartiality also operates internally regarding the judge on whom it demands, before deciding on a case, he or she identify and make efforts to overcome any prejudice or predisposition which could harm the integrity of the decision.

12. Judges cannot maintain any connection whatsoever to the parties, nor can they show favouritism or preferential treatment that puts into question their objectivity, either when directing the proceedings or making decisions.

13. In decision-making, judges must avoid reaching conclusions before the procedural moment that is appropriate for such a purpose, which is immediately prior to the judicial resolution.

14. Impartiality commands a special vigilance in the fulfilment of the principle of equal opportunities regarding the parties and other participants in the proceedings.

15. Judges, in their task of directing oral trials, must endeavour to ensure that an appropriate atmosphere is created for each party and other participants to be able to freely and calmly express their respective versions of the events and their positions on the application of Law. Furthermore, they will employ active listening as a guarantee of more accurate decision-making.

16. Impartiality also imposes the duty to avoid conduct that, within or away from the proceedings, could put them in question or prejudice public trust in justice.

17. Judges must endeavour to ensure the upholding of the appearance of impartiality in coherence with the essential nature that material impartiality has for the exercise of jurisdiction.

18. All members of the Legal Profession must avoid situations of conflicts of interests and, in the event that these occur, they must be revealed with the greatest transparency and without delay, via any of the legally foreseen mechanisms.



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19. In their social lives and in their relationship with the communications media judges may contribute reflections and opinions, but at the same time they must be prudent in order to ensure their appearance of impartiality is not affected by their public statements, and they must show, in any event, discretionary respect for the information that could prejudice the parties or the development of the proceedings.

20. In their relationships with the communications media, judges may carry out a valuable educational function in terms of explaining the law and the way in which fundamental rights operate at the core of the process.

21. When democracy, the State of Law and fundamental freedoms are in danger, the obligation of secrecy is relinquished in favour of the duty to report.

CHAPTER III

Integrity

22. Integrity demands that judges observe a conduct that reinforces the trust of citizens in the Judicial Administration not just in the exercise of jurisdiction, but in all facets in which they are recognisable as judges, or invoke their condition as such.

23. Judges will avoid both the undertaking of their professional activities outside their function and voluntary participation in reinforcement or substitution plans prejudicing the best jurisdictional performance.

24. In their personal relationships with professionals linked to the Judicial Administration Judges must avoid the risk of projecting an appearance of favouritism.

25. Judges must actively commit to respecting the dignity and equality of all, without discrimination for reasons of sex, race or ethnicity, physical or mental disability, religion or belief, sexual orientation or political conviction, or any other social or personnel circumstance.

26. Judges must undertake their jurisdictional activity with dedication and study the matters entrusted to them in detail and in their own singularity.

27. Judges will always adopt the resolution they believe to be proper and avoid their conviction being altered for reasons of convenience.

28. Judges will not accept any gift, courtesy or consideration that exceeds logical social conventions and, in no event, where it endangers their appearance of impartiality.

29. Judges must be aware that the dignity of the jurisdictional function demands appropriate behaviour.



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30. Judges will not use or lend the prestige of jurisdictional functions to further their personal interests, those of a family member or those of any other person.

31. Judges, as citizens, have the right to freedom of expression, which they will exercise with prudence and moderation with the objective of preserving their independence and appearance of impartiality, and maintain social trust in the judicial system and jurisdictional bodies.

CHAPTER IV

Courtesy, diligence, transparency

32. Judges must at all times demonstrate respectful behaviour to all those connected with the proceedings, showing due consideration to their psychological, social and cultural circumstances. Furthermore, they must show a tolerant and respectful attitude towards criticism directed at their decisions.

33. Judges must ensure that the proceedings are carried out in a timely manner and are resolved within a reasonable time period, and ensure that procedural acts are carried out with maximum punctuality.

34. Judges have the right and obligation to receive training and remain up-to-date, and to demand appropriate means of training in order to be able to carry out their functions at optimum professional levels.

35. Judges must assume a positive attitude towards transparency as a normal way of functioning for the Judicial Administration, to which they may rely on the means of institutional communication at their disposal.



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PART TWO

The Judicial Ethics Committee

Article 1

Duties

1. The Committee has the following functions:

a) Issue written opinions on consultations relating to specific cases put to them from Court Governing Chambers, Boards of Judges, Judicial Associations and any judge in active service.

The opinions will reflect the position of the Committee members in relation to the matter or question that is the object of the consultation.

b) Promote the dissemination and knowledge of the principles and propositions of judicial ethics contained in this text and in others of a similar or analogous nature.

c) Contribute to the development of the functions attributed to the General Council of the Judiciary in the coordination and collaboration with other judicial ethics committees, in particular with the Ibero-American Judicial Ethics Committee.

d) In exceptional cases, draw up reports on matters or questions of a general interest and which are related to ethical behaviour, in accordance with the principles expected from judges outlined in this text, at the behest of Court Governing Chambers, Boards of Judges or Judicial Associations.

2. The actions of the Committee may not interfere in the exercise of disciplinary power or in the determination of the civil or criminal liability of judges. The activity of the Committee will not serve as a reference or complement in actions designed to resolve civil, criminal or disciplinary liabilities, save where it is to the benefit of the interested party.

Article 2

Composition



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1. The Committee will be comprised of seven members, to whom, for the carrying out of their function, complete independence will be guaranteed.
2. Six of the members will be integrated from the Legal Profession in a situation of active service. One of them will be a Judge, three Magistrate-Judges and two Supreme Court Magistrate-Judges.
3. The final member will be a person of recognised prestige and accredited trajectory in the academic world of Ethics, Philosophy of Law or Moral Philosophy.

Article 3

Election

1. The judicial members will be elected by all active members of the judicial profession.
2. The election shall be carried out via personal vote, equal, direct and secret, and must be held three months prior to the termination of the mandate of the Committee.
3. There will be one constituency for the entire national territory.
4. Candidacies must be individual and presented within the month following the official announcement. Those who obtain the highest number of votes will be chosen, respecting the necessary representation of all judicial categories, in accordance with the stipulations of Article 2. Where insufficient candidates have presented themselves in any of the judicial categories, any vacancy will be covered by the candidate who has obtained the most votes, regardless of category.
5. The electoral process will be organised electronically by the General Council of the Judiciary.
6. Those elected as members of the Committee will designate the non-judicial member.

Article 4

Mandate

1. The Committee members will be designated for a single four-year term.



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2. Half of the judicial members of the Committee will be renewed every two years.
3. The exercise of the functions of the Committee members will be honorary, with no further economic compensation than the reimbursement of expenses occasioned.

Article 5

Functioning

1. The Committee presidency will correspond to the member elected by the majority, and the secretariat to the most recent judicial member.
2. The valid constitution of the Committee will require, as a minimum, the presence of five of its members. Notwithstanding, the presence of all members will be necessary when they so agree in view of the entity of the matter or question that must be the object of examination or treatment.
3. Committee reports shall be adopted in accordance with majority rule.

The President will always have a deciding vote in the event of a tie.

4. Opinions must be issued within the two months following the realisation of the consultation.

Reports must be approved within the three months following the date on which their drafting and drawing up have been agreed, respectively.

5. The first Committee formed will be entrusted with the drawing up, in accordance with the stipulations of this text, of its rules of organisation and functioning, which it will adopt by majority vote.

The Committee will apply modifications to rules it considers opportune by majority vote.

6. The General Council of the Judiciary must provide the Committee with the material and human resources required for its correct organisation and effective functioning.

Article 6



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Effects

1. Committee minutes have no obligatory legal force and are not binding.
2. Matters or questions subject to investigation, trial or disciplinary proceedings may not be the object of consultation.

Article 7

Public access

1. The Committee will create an annual report on activities undertaken.
2. Committee minutes will be made public and the General Council of the Judiciary will afford them maximum dissemination, guaranteeing, in any event, the prior disassociation of any references of a personal nature they may contain, in complete respect for the right to honour, privacy and data protection.

TRANSITORY PROVISION

The announcement of the first election of the Judicial Ethics Committee will be made by the General Council of the Judiciary within the period of three months from the acceptance of this text.

The presidency of the first meeting of the Judicial Ethics Committee will correspond to the Judge or Magistrate-Judge with the longest service in the Legal Profession, and the secretariat, to the most recent.

The first renewal of the Committee will take place two years following its constitution, with the replacement of the Judge, one Magistrate-Judge and one Supreme Court Magistrate-Judge. Those to be replaced will be decided at random in the first meeting

FINAL PROVISION

These “Principles of Judicial Ethics” may in no event, directly or indirectly, be used for disciplinary ends, save where they are beneficiary to the party subject to the procedure.