

THE JUDGES SHALL HOLD THEIR OFFICES DURING GOOD BEHAVIOUR: ETHICS AND DISCIPLINARY MEASURES

IBERO-AMERICAN COMMISSION OF JUDICIAL ETHICS (IACJE)

Article III, section 1 of the *Constitution of the United States* laid down in 1787: "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour." This is a wise and accurate formula for expressing the need of controlling independent judges in a democratic society. Notwithstanding, to achieve this constituent purpose is a very complex task that is based not only on criminal or disciplinary measures, but also on the adoption of codes of conducts, as it has been suggested by Article 11, paragraph 1 of the *United Nations Convention against Corruption*.

The *Bangalore Principles on Judicial Conduct*, the *Ibero-American Code on Judicial Ethics*, the *London Declaration on Judicial Ethics* and the *Spanish Principles of Judicial Ethics* are progressive and meaningful examples of codes adopted from this approach at different international, regional and national levels. Usually, these codes of conduct for judges are established in order to supplement disciplinary measures against judges. Notwithstanding, there are several models for adopting and interpreting the content of the codes of ethics for judges, bearing in mind that ethical rules and legal norms overlap each other. Thus, it is crucial to distinguish different scopes of ethical, disciplinary or criminal responsibilities regarding judges' behaviour.

According to the growing importance of the ethical approach in a given legal traditional world where only legislative measures and law courts were relevant, it is crucial to underline the full effectiveness of ethical standards and the tasks of consultative committees delivering non-binding opinions. Fast developments and changes in some special features of our society call not only for law, hard and soft law, but, additionally, for common moral standards regarding technologies, social networks, means of communications and so many other substantial and dramatic changes made in the context where judges live and do their jobs.



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IBERO-AMERICAN COMMISSION OF JUDICIAL ETHICS

The Ibero-American Commission of Judicial Ethics is an outstanding regional organization, shared by European and American countries, in order to cooperate and coordinate efforts of applying judicial ethics at the international level.

In 2006 the Ibero-American Judicial Summit, composed of 23 countries, adopted the *Ibero-American Code of Judicial Ethics*.

The Code accomplishes two goals: on the one hand, it extensively enshrines fundamental principles and ethical duties for judges; and, on the other hand, the Code itself sets up one Commission.

The Ibero-American Commission of Judicial Ethics, composed of nine commissioners and the secretary executive, gives consultative opinions regarding whether the behaviour of judges complies with the ethical code and disseminates ethical culture within the Ibero-American judges.



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Main Issues:

The session will be dedicated to four great topics concerning comparative models of judicial ethics, the process of adopting and enforcing the codes of conducts for judges, the separate treatment of ethical and disciplinary measures and, finally, the institutional experiences developed at the international, regional and national levels.

The first part is dedicated to analyzing idealistically the models of judicial ethics according to different legal cultures. The traditional model (where there is not an ethical level, but everything could be considered under a disciplinary or criminal perspective; then, moral issues as such are not taken seriously in an exclusive legal view). The transitional model (ethics and disciplinary measures are adopted by the same authority over judges concerning disciplinary rules and professional standards). Finally, in the dual model there is a clear distinction between ethical rules and disciplinary measures, as applied by two different institutions with very different moral or legal responsibilities; as the *Spanish Principles of Judicial Ethics* categorically states, "The disciplinary regime is completely unrelated to judicial ethics.").

Secondly, there is a very interesting practice for drafting, adopting and enforcing codes of judicial ethics, and it deserves to be analyzed from a comparative approach. This issue will cover the ways for adopting the codes; their content, notably principles and values to be considered; and, finally, the institutional enforcement of the ethical standards. Special consideration will be given to European and American experiences.

Thirdly, it is of great value for judges to explain the overlapping interaction between ethical, disciplinary and criminal areas; on this issue, the Ibero-American Commission's experience would be meaningful. The discussions will distinguish legal and ethical enforcements using the case to case approach. It is noteworthy that the Ibero-American Commission is the convergence point for European and American legal cultures, notably as the contributions made by the European Court of Human Rights (Strasbourg Court), the Inter-American Court of Human Rights (San José Court) and the Court of Justice of the European Union (Luxembourg Court).

Finally, national and international experiences regarding the functioning of institutional mechanisms of judicial ethics will be discussed. In this regard, it will be of interest to explain how the process of giving opinions on ethics for judges is developed and used as an instrument of fighting against corruption. The discussion will be linked to the management of judicial tasks and economic activities from the perspective of judicial independence.

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Key Objectives:

The key objectives of the session will be to distinguish the binding (morally and legally) nature of codes of conduct for judges, to exchange ideas between different legal cultures (civil law and common law), to analyze how to draft, adopt, improve and enforce codes of ethics for judges; to examine specific codes of conduct (international, regional and national experiences) and their enforcement through disciplinary and ethical committees; to compare and to compile disciplinary resolutions and ethical advisory opinions on particular issues.

Specific Questions and Discussion Points:

- The classification of each code of conduct or principles that suits the most to the traditional, transitional or dual models.
- Suggestions and good practices in the process of adopting, improving and enforcing each particular code of conduct in each country/region.
- The internal morality of disciplinary and criminal sanctions against judges and the complementary relationship of the enforcement of codes of conduct.
- The experience and the effectiveness of giving opinions on ethical standards for judges: economic independence, impartiality, etc.
- Is there a code of conduct in force in your country/region?
- Is any part of your (national/regional) code of conduct for judges legally/morally binding?
- Are there any disciplinary measures differentiated from ethical commitments (legal norms and codes of conduct) to be applied to judges in your country/region?
- Do you think that your code of conduct deserves to be improved? Regarding its substantive content, institutional mechanisms or both of them?
- Could you provide some specific experiences of implementing your national/regional code of conduct?
- Could you explain and justify legally and morally the ethical and disciplinary committees' compositions and their different approaches?
- Do you have compiled disciplinary resolutions and ethical advisory opinions in your country/region?
- What kind of issues are of the utmost interest to be dealt by the institutional mechanisms setting up by your code of conduct?
- This session is completely open to relevant issues and new inputs submitted by all the participants.

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Proposed Outcomes of the Session:

The main outcomes of the session must be produced in terms of knowledge, policy-making and democratic legitimacy of judges and their judicial tasks.

It is necessary to achieve a careful understanding of the different levels of responsibility (morally and legally) according to national and international mechanisms. This output requires a deep study and comparison of several codes of conduct in order to keep in mind the ideal code of conduct to be set up or to be improved and enforced depending on each society where judges accomplish their duties. Likewise, this session should improve the expertise of the relationship between different codes, at the international (*Bangalore Principles*), regional (*Ibero-American Code of Judicial Ethics*, *Magna Carta of European Judges*, etc.), or national levels and depending on their legal and moral cultures.

There is a need to clarify the overlapping and complementary functions played by legal rules and moral standards. It is appropriate to draw the thin line that exists between ethics and law as applied to judicial behaviour and it is convenient to identify the overlapping areas according to different legal cultures in all regions and nations all over the world. The session should provide practical tools in order to be adopted in each country and region, as appropriate. All these procedures and mechanisms should contribute to overcoming the reluctance of many judges and judiciaries to all kinds of ethical approaches.

Finally, this session is expected to strengthen the confidence of a democratic society in judges. This is the most fundamental value of all kinds of moral and legal mechanisms of control over judges. Nowadays, courts need legitimacy and citizens' support. This is the challenge of our courts or, as it has stated by the European Court of Human Rights, "In this connection even appearances may be of a certain importance or, in other words, 'justice must not only be done, it must also be seen to be done.'" As the Strasbourg Court has said, "what is at stake is the confidence which the courts in a democratic society must inspire in the public."
