

High-Level Meeting of the Global Judicial Integrity Network
(25-27 February 2020, Doha, Qatar)

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

Ibero-American Commission of Judicial Ethics

I. SESSION ORGANIZER

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Organization:	Spanish Judiciary Ibero-American Commission of Judicial Ethics

II. RAPPORTEUR¹

Rapporteur:	David ORDÓÑEZ-SOLÍS
Position:	Judge Secretary-Executive
Organization:	Spanish Judiciary Ibero-American Commission of Judicial Ethics

III. MODERATOR AND PANELLISTS:

Moderator:	Rosa María MAGGI DUCOMMUN
Position:	Justice Commissioner
Organization:	Supreme Court of Chile Ibero-American Commission of Judicial Ethics

PANELLISTS

Name:	Sigfrido STEIDEL-FIGUEROA
Position:	Judge Administrative Chief Former Commissioner
Organization:	Puerto Rico Judicial Branch Ibero-American Commission of Judicial Ethics
Topic of presentation:	Comparative models of judicial ethics

¹ Responsible for drafting the session report.

<p>Summary of presentation:</p>	<p>Judges' behaviour, including in some aspects of their private lives, is relevant for carrying out judicial functions. Constitutional provisions, such as those in the United States Constitution on Judges' Good Behaviour or the Puerto Rico Constitution, have been fulfilled through legally binding rules and, recently, in the form of canons of judicial conduct or codes of judicial ethics.</p> <p>Judge Steidel-Figueroa analysed idealistically the models of judicial ethics according to different legal cultures, notably from the United States and several Latin American countries.</p> <p>Enforcement of judicial ethics was classified into three categories or models: (1) disciplinary and ethical measures are adopted by the same institution (transitional model); (2) only disciplinary measures against judges are considered and ethical rules are not enforceable from the legal point of view (traditional model); and (3) ethics and disciplinary sanctions are applied independently and are interpreted by different committees with different ethical and legal responsibilities (dual model).</p>
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<p>Name:</p>	<p>Wenceslao OLEA-GODOY</p>
<p>Position:</p>	<p>Member of the Spanish Council for Judiciary President of the Spanish Commission of Judicial Discipline</p>
<p>Organization:</p>	<p>Spanish Council for Judiciary Supreme Court of Spain</p>
<p>Topic of presentation:</p>	<p>The process of adopting and enforcing the codes of conducts for judges: the Spanish experience</p>
<p>Summary of presentation:</p>	<p>In 2016, Spain has undertaken an essential change from a purely disciplinary/traditional model to a dual model, where discipline is legally regulated and applied by the traditional Judicial Disciplinary Committee, and ethics is formally established in a code of principles of conduct for Spanish judges, to be interpreted by an ethical committee, called the Spanish Committee of Judicial Ethics. Judges form the majority of the members in both committees.</p> <p><i>The Spanish Principles of Judicial Ethics</i> have categorically stated that "the disciplinary regime is completely unrelated to judicial ethics."</p> <p>According to Justice Olea-Godoy, in the last years' actions taken by the Spanish Council for the Judiciary in order to address the recommendations of the Council of Europe (GRECO reports), the Ibero-American Code of Judicial Ethics and the opinions given by the Spanish Committee of Judicial Ethics have been fruitful.</p>

<p>Name:</p>	<p>Fernando CASTRO-CABALLERO</p>
<p>Position:</p>	<p>Commissioner Former Justice</p>

Organization:	Supreme Court of Colombia Ibero-American Commission of Judicial Ethics
Topic of presentation:	The separate treatment of ethical and disciplinary measures: Colombian experience
Summary of presentation:	<p>It is of great value for judges to discuss and understand the overlapping interaction between ethical, disciplinary and criminal rules.</p> <p>The Colombian experience on judicial ethics shows that the same traditional Committee continues to adopt both disciplinary and ethical measures.</p> <p>Nevertheless, putting in place only disciplinary measures is not enough. It is necessary to adopt a preventive approach and, in that regard, ethical measures are an essential instrument for improving the functioning of the judicial branch and adhering to the rule of law.</p> <p>The influence of the Ibero-American Code of Judicial Ethics and its Commission is gradually shifting towards a new approach where the ethical and disciplinary measures are adopted by different institutions. The Commission has inspired the adoption of new national codes and has issued topical advisory opinions with a view to stimulating and promoting a culture of judicial integrity in 23 European and American countries.</p>

Name:	Elena MARTÍNEZ-ROSSO
Position:	Justice Commissioner
Organization:	Supreme Court of Uruguay Permanent Secretary of the Ibero-American Judicial Summit Ibero-American Commission of Judicial Ethics
Topic of presentation:	The institutional experiences developed at international, regional and national levels: the Ibero-American experience
Summary of presentation:	<p>Committees of judicial ethics play a role in discussing and proposing solutions to individual ethical dilemmas, in particular through their advisory activities.</p> <p>The Ibero-American Commission of Judicial Ethics has adopted in the last 15 years numerous opinions on different issues related to judicial ethics. The opinions have been requested by members of the Ibero-American Judicial Summit or have been adopted by the Commission's own initiative. Some of the important opinions of the Commission concerned issues such as: the membership of judges to Masonic lodges (2014); the use of social networks by judges (2015); the involvement of judges in the sports tribunals belonging to FIFA (2016); the relationship between judges and mass media (2018); the indebtedness and the economic independence of judges (2019); the compatibility of commercial activities with judicial tasks (2019); and the mediation and the role of judges (2019).</p> <p>The Ibero-American Commission of Judicial Ethics has contributed to a</p>

	preventive action instead of disciplinary measures against judges. Moreover, these developments have improved the public's perception of justice.
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IV. BACKGROUND INFORMATION ON THE TOPIC:

Article III, section 1 of the Constitution of the United States laid down in 1787 that "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 to control independent judges in a democratic society. However, 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 judicial conducts, as suggested by article 11, paragraph 1 of the United Nations Convention against Corruption (2003).

The *Bangalore Principles on Judicial Conduct* (2002), the *Ibero-American Code on Judicial Ethics* (2006), the *London Declaration on Judicial Ethics* (2010), and the *Spanish Principles of Judicial Ethics* (2016) are progressive and meaningful examples of codes of judicial conduct adopted at different international, regional and national levels.

Usually, codes of conduct for judges are established in order to supplement disciplinary measures against judges. However, there are several models for adopting and interpreting the content of codes of judicial conduct, bearing in mind the overlap between ethical rules and legal norms. Thus, it is crucial to distinguish different scopes of ethical, disciplinary or criminal responsibilities regarding judges' behaviour.

Given 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 job.

During the Session, paper copies were distributed of [Código Iberoamericano de Ética Judicial Comentado](#) (*Comments on the Ibero-American Code of Judicial Ethics*) among participants. This is a book edited by the Ibero-American Commission of Judicial Ethics which was published by the Council for the Judiciary of Colombia in November 2019.

Likewise, many institutional, legal and doctrinal resources are available at the [Ibero-American Commission of Judicial Ethics](#) website: www.cidej.org (in Spanish, English, Portuguese and French).

V. SUMMARY OF THE SESSION:

The session was based on the distinction between the binding (legally) or non-binding (morally) nature of disciplinary measures and codes of conduct for judges.

The session was dynamic and thought-provoking. There were numerous contributions from the floor, including by delegations from Cabo Verde, Chad, Costa Rica, Iraq, Oman and the State of Palestine.

There was an exchange of ideas between different legal cultures (civil law and common law) with the aim to: analyse how to enforce codes of ethics for judges; examine specific codes of conduct, notably the Ibero-american experiences and their enforcement through disciplinary and ethical committees; and compare disciplinary resolutions and ethical advisory opinions on particular issues.

The key messages stemming from the session are:

Some considerations to bear in mind with regard to the disciplinary measures include: the need to prevent that the discipline against judges could become a way of questioning judicial decisions; independence of judges must be preserved under disciplinary proceedings; proportionality should preside both ethical and disciplinary measures; and finally, due process of law and procedural guarantees in the disciplinary proceedings are essential.

Every country should adopt a code of judicial ethics and the ethical dimension of judges' behaviour should be emphasised in vocational and permanent training of judges.

According to their legal traditions, every country should consider adopting or improving a dual model, i.e. model in which ethics and disciplinary sanctions are applied independently and in which there is a clear-cut distinction between disciplinary and ethical responsibilities. A sustainable model should distinguish between different levels of ethical and disciplinary responsibility in so far as it fits better with existing judicial contemporary needs.

Regional experiences, as the Ibero-American Commission of Judicial Ethics has shown for the last 15 years, are beneficial as they contribute to improving the ethical culture in judiciaries.

The preventive approach of judicial ethics should be present in the opinions delivered by committees answering questions proposed by judges themselves, by the judiciaries or at the own the initiative of the committees on judicial ethics.

Strengthening the ethical standards and their application contributes to improving the image of judges and preventing polarized public opinions or distrust in the judicial branch.

VI. HOW THE SESSION SUPPORTS THE OVERALL OBJECTIVE OF THE GLOBAL JUDICIAL INTEGRITY NETWORK OF STRENGTHENING JUDICIAL INTEGRITY AND PREVENTING CORRUPTION IN THE JUSTICE SYSTEM:

This session contributed to the exchange of experiences, cases and advisory opinions on the implementation of codes of judicial conduct, in line with the objectives of the Global Judicial Integrity Network.

The session created a space to discuss the experiences of the Ibero-American Commission of Judicial Ethics and its 23 members from Europe and Latin America and, using these positive experiences, to inspire the positive change in other countries and regions. As such, these regional experiences could act as a motor or as a lever between the global efforts (the Global Judicial Integrity Network) and the national efforts.

This approach is inspired by the Sustainable Development Goals (SDG), especially Goal 16 on promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. This particular goal could be achieved through promoting the rule of law at the national and international levels,

reducing substantially corruption and bribery in all their forms and strengthening relevant national institutions, including through international cooperation.

VII. PROPOSED OUTCOME(S) OF THE SESSION AND THEIR ACHIEVEMENT:

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

The session increased the understanding of the different levels of responsibility (moral and legal) under existing national and international mechanisms. It confirmed that a deep study and comparison of various codes of conduct is helpful in order to develop, improve or implement an “ideal” code of conduct that fits the needs of a given judiciary and the society in which judges accomplish their duties. Likewise, this session improved the expertise on the relationship between different codes at international (Bangalore Principles of Judicial Conduct), regional (Ibero-American Code, European *Magna Carta*, etc.) or national levels, taking also into consideration the existing legal and moral cultures.

There was a need for clarifying 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 has provided practical tools that may be considered to be adopted in different countries and regions, 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 has discussed the issue of how to strengthen the confidence of a democratic society in judges. This is the most fundamental value of all moral and legal mechanisms of control over judges. Nowadays, courts need legitimacy and citizens' support. This is the challenge of our courts and, as 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 noted, “what is at stake is the confidence which the courts in a democratic society must inspire in the public.”

VIII. CONCLUSIONS OF THE SESSION AND RECOMMENDATIONS TO THE GLOBAL JUDICIAL INTEGRITY NETWORK:

The Global Judicial Integrity Network should promote the establishment of mechanisms or fora for discussing and questioning different ethical dilemmas that arise in the exercise of judicial functions.

The Network should encourage the adoption of ethical codes and the establishment of committees of judicial ethics with a view to applying a general ethical approach in the judges' professional and even private lives.

Ethical answers and solutions are very flexible and often quicker to make a positive impact than disciplinary or even criminal measures against judges. This ethical approach enables to strengthen judicial independence and ensure that judges enjoy more impartiality and act with integrity.

The Ibero-American experience could be a reference framework for establishing similar regional or supranational committees or encouraging existing committees to assume consultative functions on judicial ethics.

The Network could encourage judges, councils for judiciaries and other judicial institutions to consider requesting opinions on ethical dilemmas regarding the judges' behaviour from such regional or supranational committees of judicial ethics.

IX. ADDITIONAL OBSERVATIONS, IF APPLICABLE

The session was developed in a suitable framework and the assistance provided by the UNODC Team of Judicial Integrity was remarkable.